No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME III

Pages 975 to 1472

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Whereupon—

A. EMORY WISHON

was produced as a witness for and on behalf of the applicant and having been first duly sworn, was examined and testified [947] as follows:

Direct Examination

By Mr. Phleger:

Q. Will you please state your name and residence for the record?

A. A. Emory Wishon; Piedmont, California.

Q. How long have you lived in California?

A. Since 1889.

Q. Has your family lived here since that time?

A. That is right.

Q. Your father and your parents lived in California?

A. My parents moved to California in 1889.

Q. Before you took up your residence in Piedmont where did you live?

A. Fresno, California, immediately before that.

Q. And you lived in Fresno for many years?

A. I did.

Q. What companies are you an officer or a director of, in addition to the Pacific Gas and Electric Company?

A. San Joaquin Light and Power Corporation, Midland Counties Public Service Corporation, Valley Electrical Supply Company, Yosemite Portland Cement Company, Wishon Watson Company, Wish-

(Testimony of A. Emory Wishon.)

on Olive Company, The Twenty-One Company, and the LaHacienda Company. [948]

Q. The San Joaquin Light and Power Company and the Midland Counties Public Service Corporation are dissolved corporation, are they not? That is, their properties have been transferred to the Pacific Gas and Electric Company?

A. I am not sure about the dissolution of the corporations. The properties have been transferred to the Pacific Gas and Electric Company.

Mr. Bosley: The Midland Counties Public Service Corporation has been completely dissolved; the San Joaquin Light and Power Corporation has not yet been dissolved. The properties have been transferred to the Pacific Gas and Electric Company.

By Mr. Phleger:

Q. The Valley Electrical Supply Company is a subsidiary of the Pacific Gas and Electric Company?

A. 95 per cent of the stock is owned by the Pacific Gas and Electric Company.

Q. What business does it conduct?

A. An electrical merchandising and jobbing business in the San Joaquin Valley, operating stores in Bakersfield, and in Fresno.

Q. Is it a public utility?

A. I think it is part of a public utility now. For many years it was not considered a public utility property. [949] I think in 1932 it was included as a public utility property.

(Testimony of A. Emory Wishon.)

Q. It doesn't operate any public utilities?

A. No; strictly a merchandising company.

Q. And its business and properties are located entirely within the state of California?

A. Oh, yes.

Q. I call your attention to applicant's Exhibit No. 32. Will you from reference to it, state the number of shares of Pacific Gas and Electric Company stock which you own, and which are owned by corporations or persons affiliated with you?

A. I personally own 860 shares of Pacific Gas and Electric Company preferred, and 920 shares of Pacific Gas and Electric Company common.

My daughter, Mrs. Martha Jarrell, owns 107 shares of Pacific Gas and Electric Company preferred and 35 shares of common.

My son, now deceased, Albert Graves Wishon, owns 57 shares in his name of preferred and 51 common.

My son, A. Emory Wishon, Jr., owns 100 shares of preferred and 124 of common.

My wife owns 43 shares of preferred and 33 common.

Q. The corporations with which you are affiliated own [950] how many shares?

A. The Wishon Watson Company owns 4,100 shares of preferred and 2,700 shares of common.

The Yosemite Portland Cement Corporation owns

(Testimony of A. Emory Wishon.)

1,840 shares of preferred, and 1,000 shares of common.

That makes an aggregate of 11,970 shares.

Q. Are you substantially interested as a stockholder in the Wishon Watson Company and in the Yosemite Portland Cement Corporation?

A. I am.

Q. And you are the president of the latter company, are you?

A. President of both of them.

Q. When did your family first come to California? A. In the fall of 1889.

Q. Where did they locate?

A. They located in the little town of Tulare, in the San Joaquin Valley.

Q. Describe your business experience after leaving college.

A. Well, upon leaving college I came direct to the Coalinga oil fields and worked in the town of Coalinga, and spent most of the first year in endeavoring to promote a company to buy water from the east side of the valley to [951] supply water to the field. The water in the field was very limited in quantity and very bad in quality.

During that particular time we decided that the matter of boiler water would be a thing of the past in the near future as we thought that the oil wells could be operated by electricity and, as a result, in the fall of 1909, the Coalinga Water & Electric Company was formed, and purchased the

(Testimony of A. Emory Wishon.)

properties of the Bunting Iron Works known as the Coalinga Light and Power Company.

I managed that small property until August 10, 1910, when I was appointed assistant to the general manager in charge of the southern division of the San Joaquin Light and Power Corporation with headquarters in Bakersfield.

I remained in that capacity until 1913 when I was made assistant general manager of the San Joaquin Light and Power Corporation and the Midland Counties Public Service Corporation, and moved into headquarters at Fresno.

In 1920 my father was made Managing Director, that is, Vice-President and Managing Director, and I was made General Manager of the San Joaquin Light and Power Corporation, the Midland Counties Public Service Corporation, and the Fresno City Water Company.

I remained in that capacity up until the spring of 1925 when the Western Power acquired control of the San [952] Joaquin and Midland Counties group of properties and then continued on as general manager of that outfit until the fall of the same year, when the North American acquired control, but I was elected Vice-President and General Manager of the three corporations.

In the very early part of 1927—I will say at the time that the Western Power acquired control—I was made a director of the Great Western Power Company of California; and in the very early

(Testimony of A. Emory Wishon.)

spring of 1927 I was made Vice-President and General Manager of the Great Western Power Company of California, and that group of properties, also the other group that I had previously managed, and moved to San Francisco and remained in that capacity until 1930 when the properties were acquired by the Pacific Gas and Electric Company, the control of the properties, at which time I was made vice president, appointed vice president and assistant general manager of the Pacific Gas and Electric Company, vice president and assistant general manager of the Great Western Power Company, president of the San Joaquin Light and Power Corporation, and the Midland Counties Public Service Corporation.

The Fresno Water Company had been sold during the time the Western Power held control and before they delivered control to the North American Company. [953]

In 1939—I think it was in January—I was elected to the corporate vice-president and assistant general manager of the Pacific Gas and Electric Company, and in 1936, in October, I was elected a director of the Pacific Gas and Electric Company.

Q. Describe briefly the San Joaquin Light and Power Company, where it was located, and who were the persons primarily interested in it.

A. The San Joaquin Light and Power Company, Corporation, its history really starts with

(Testimony of A. Emory Wishon.)

the San Joaquin Electric Company, which was incorporated in 1895 by a man by the name of Seymour, and a man by the name of John S. Eastwood, who afterwards became quite a famous engineer.

They built a small plant of 1,600 kilowatts on the north fork of the San Joaquin River, about 41 miles above Fresno. They ran a transmission line to Fresno and built a distribution system in that town.

Shortly after they had gone into operation a group headed by a man by the name of Fulton G. Berry, who was the head of the gas company, and which they were competing with, obtained an injunction against their use of certain waters of the stream, and together with that, and a couple of dry years, in 1902 this San Joaquin Electric Company was in the hands of the receiver. [954]

At that time my father, representing William G. Kerckoff, Allen C. Balch, Abe Haas and Casper Kohn, acquired control from the Receiver of those properties, forming the San Joaquin Power Company.

That company's first job, the San Joaquin Power Company, was to put the properties back into condition. They had been very badly neglected. They built a very small steam plant in Fresno for relief and started another hydro-plant slightly higher up on the same tributary of the San Joaquin River, and generally expanded the system in and around Fresno.

(Testimony of A. Emory Wishon.)

In 1905, 1905 or 1906—I believe it was 1905—the San Joaquin Light and Power Company was incorporated, which permitted them to obtain more capital. It acquired the property of the San Joaquin Power Company, continued to expand the system, and to complete its plant in 1906; and also started the construction of a reservoir higher up on the stream to supply storage water to the plants. That reservoir was completed in 1910.

In 1910 the San Joaquin Light and Power Corporation was formed to acquire the properties of the San Joaquin Light and Power Company, which were operating and distributing power in and around this town of Fresno; to also acquire the properties of the Merced Falls Gas and Electric [955] Company, which was then generating an amount of hydro-power about 17 miles up on the Merced River above Merced, and supplying electricity to the town of Merced; and to acquire the properties of the Power Transit and Light Company, which had a small plant on the Kern River, and which was supplying electricity to the town of Bakersfield, and also operating an artificial gas system and a small street railway system.

From that time on it was a matter of expansion, both in production, plant, transmission and distribution, up until the time in 1925, the spring of 1925, when the Western Power Corporation acquired control from this particular group.

(Testimony of A. Emory Wishon.)

Q. Describe the transaction by which the Western Power Corporation acquired—strike that out.

What was the Midland Counties Public Service Corporation?

A. The Midland Counties Public Service Corporation started with the purchase of the Bunting Plant that I previously mentioned, Coalinga Light and Power Company. I think it was in 1914 that the name of Coalinga Water and Electric Company, which the company first incorporated to purchase this plant, was changed to the name of the Midland Counties Public Service Corporation.

That corporation, the Midland Counties Public Service Corporation, after purchasing this first plant, or its predecessor, the Coalinga Water and Electric Company, built [956] a transmission tie line of about 40 miles in length, from the little town of Lemoore over to the Coalinga field, and purchased power wholesale from the San Joaquin Light and Power Corporation, and distributed retail to the customers.

In 1914 it purchased a bunch of properties on the Coast. I think it was the Midland Counties Company, or some name very similar.

The Examiner: Midland Counties Gas and Electric Company.

The Witness: That is right;—which operated properties, gas and electric, in the town of San Luis Obispo, which operated the electric properties in Santa Maria.

(Testimony of A. Emory Wishon.)

It also purchased the Paso Robles Water and Light Company, which was a light and water company in the town of Paso Robles and a small distribution system, water distribution system, and an independent electric system of a couple of hundred horse power known as the Russell Robinson Water and Electric Company, in the town of Arroyo Grande.

The company's history is one of expansion. It now covers the western portion of Fresno County, the southern portion of Monterey County, a small portion of San Benito County, San Luis Obispo County, and Santa Barbara County [957] down as far as, well, fifty miles north of Santa Barbara City.

They have sold their gas properties and their water properties in the interval, and it is now strictly an electric utility company.

Q. Its properties are now operated by the Pacific Gas and Electric Company?

A. Yes. The property is now owned by the Pacific Gas and Electric Company.

That property, I might say, was controlled from the beginning and throughout its history by the same group of men I named as being the engineers of the original San Joaquin Light and Power Company and Corporation.

Q. Those individuals continued, did they not, to be the principal owners of the San Joaquin

(Testimony of A. Emory Wishon.)

Company right down until 1925 when the Western Power Corporation acquired their securities?

A. That is correct.

Q. Will you describe briefly the transaction in 1925 whereby the Western Power Corporation acquired the stock control of the San Joaquin and the Midland Company?

A. Well, in 1925 the Western Power Corporation began negotiations—I think it was in 1924, late 1924,—for the control of that group of properties. Negotiations were [958] carried on largely between Mr. H. P. Wilson and A. C. Balch; Mr. Wilson representing the Western Power Company and Mr. Balch representing the San Joaquin and Midland Counties group.

Finally an agreement was entered into on November 29, 1924, and it was consummated and the properties delivered, I think, in February of 1925.

The Balch and Kerckhoff interests held the major part of the stock that was delivered. However, there was two other groups. Incidentally, both of these groups had to a large degree received their stock holdings in exchange of stock back in 1910 for the properties of the Power Transit and Light Company.

These other two groups were known as Gordon Blanding and Al T. Haggin. On the delivery of stock the Balch-Kerckhoff group delivered 32,707 shares of 7 per cent preferred and 79,980 shares of common.

(Testimony of A. Emory Wishon.)

The Gordon Blanding group, which included Louis T. Sharon and Harry L. Tevis, delivered 5,793 shares of preferred and 7,291 shares of common.

There was a small block of stock owned by the Mercantile Trust Company, a California corporation, of 332 shares of common, which was delivered.

Al T. Haggin, of New York City, delivered 6,250 [959] shares of preferred, and 6,333 shares of common.

That made a total of 44,750 shares of preferred which were delivered, and 95,936 shares of common, or approximately 53 per cent of the outstanding stock of the company as of that date.

Q. So that early in 1925 the Western Power Corporation was the owner of the majority of the stock of the San Joaquin Company and the Midland Company, is that correct?

A. Yes, sir. I might say that there were 10,000 shares of common stock of the Midland outstanding, all in the hands of this group—I had some of it, but I was part of the group through my father—and 5,000 shares of preferred, and that was all delivered.

Q. The Western Power Corporation at that time was also the owner of the majority of the stock of the Great Western Power Company of California, the operating company, was it not?

A. That is right.

(Testimony of A. Emory Wishon.)

Q. What took place immediately after the Western Power Company acquired control of the San Joaquin and Midland Companies with respect to their method of operation and the management?

A. Outside of rather intimate contacts between the [960] two organizations, there was no immediate change of personnel in the organization. However, the directors, there were a number of directors of the North American Company, I mean of the Western Power and Great Western companies on the San Joaquin Board, and I was made a director of the Great Western Power of California Board of Directors.

The first real co-ordination, you might say, of operations, was almost immediately started in the building of a transmission line from the Brighton sub-station, just near, at the edge of Sacramento, to the Wilson sub-station at the northern part of our territory at Merced, tying physically these two properties together, and making available by that tie-line the production resources of each of the properties to the other.

Q. Was there any substantial benefit achieved through tying those two properties together?

A. Very great. The tie-line that was built was immediately very profitable to both companies. It made it possible to make available the resources of one company to the other. At a time there would be a demand for power on one company and it had a lack of facilities, we will say, and there was

(Testimony of A. Emory Wishon.)

adequate power supply on the other, it could be taken over the lines to the benefit of both companies. [961]

This tie-line was worked out on the basis of a division of the savings. As I recall it—I think I am substantially correct—the tie-line cost slightly less, that is, the first circuit and the line, was $17,500,000.00. Each of the companies contributed 50 per cent of the fixed charges, although the line was built in the name of the Great Western Power Company. [962]

In the first year of its operation the peak delivery to the San Joaquin Light & Power Corporation was 42,000 kilowatts.

The amount of money paid to the Great Western Power Company that year, and naturally the same amount was saved by the San Joaquin Light & Power Corporation, was $113,204.

The formula worked out for that line—I think Mr. Black and myself get the credit for that—was one of those formulas that simply works. You can't lose by it because you divide the savings and it is less investment cost than the ordinary standby plant; that is the fixed charges are less per year. Yet it makes available a certain amount of capacity from idle equipment or idle water. For instance, we will have water going down the river on one of our grants at water sheds on the San Joaquin, we will say, past the stream flow plant in quantities that cannot be used. We may have a plant we can

(Testimony of A. Emory Wishon.)

operate at 100 per cent capacity and yet have no use for it on the San Joaquin Power.

The Great Western, with its reservoir up here at Almanor, could back off on plants being operated by stored water and conserve that stored water for future use.

We even get down to the fine points over the years of operating the most efficient steam plant, the ones that use the least fuel, in dividing the difference, what the fuel would cost at the plant on the opposite system, and what it [963] did actually cost.

Of course, the company producing the power is paid its out-of-pocket cost and the balance of the saving is divided. It was a very, very favorable arrangement.

Q. Now, later in 1925 did the North American Company acquire control of the Western Power Company?

A. It was in September or November, I think; somewhere in there, of that same year.

Q. State what you know of that transaction?

A. I knew little of that transaction until after it had taken place. In fact, I knew nothing of it when the North American purchased Western Power control until the deed was done.

Q. Now, after North American acquired the control of Western Power Corporation, which at that time had the control of the Great Western Power Company of California, of the San Joaquin Company, and of the Midland Company, what changes

(Testimony of A. Emory Wishon.)

took place in the method of operations and in the executive personnel?

A. Well, I remember that the Board of Directors were increased to 13 and 4 members of the Board were North American officers or directors.

As I say, I moved up here in 1927 and the management of all the properties were placed under one management.

From that time on we coordinated certain job, such as [964] general sales manager. We continued the operation of our tie line. We had one publicity man, one advertising department that covered the general western properties.

Q. Was Mr. Black an officer of the Great Western Company of California and also of the Western Power Corporation?

A. I don't know about the Western Power Corporation.

Q. He was of the Great Western Power Company?

A. He was on both the Great Western Board and the San Joaquin Board.

Q. Do you recall when that was?

A. It was very early in 1927, if I am not mistaken.

Q. That was about the time that you—

A. (interposing) I came up along in November to break in on the desk about six weeks ahead of time.

Q. And he then went East?

(Testimony of A. Emory Wishon.)

A. He then left for the East.

Q. Did you succeed to the position which had previously been held by Mr. Black? A. I did.

Q. When Mr. Black went East he became a vice-president of the North American Company?

A. That is correct.

Q. Describe the relationship which existed between the Great Western Power Company of California, the San Joaquin [965] Company, the Midland Company, and the North American Company during the period 1927 to 1930 when the Pacific Gas and Electric Company acquired the North American holdings in those companies?

A. Well, these various California corporations were naturally operated to a degree independent, at least corporately so, but they had different Boards of Directors, and different stockholders. On the boards of each of these corporations, however, were four North American directors; Mr. Black, by the way, being one of the members of the Board in each instance.

There was a very close contact with the North American officers in New York. Reports on various subjects were continually forwarded back there.

We had certain reports made annually, and certain semi-annually, monthly reports, and even daily reports on output. We were continually in contact with the North American office, and operated the properties in the most efficient way possible, taking advantage, so far as possible, of local joint opera-

(Testimony of A. Emory Wishon.)

tions, at the same time having to keep our rate basis and our operating expenses separately because these were separate corporations and under the jurisdiction of the California Railroad Commission and separate stock ownerships.

Q. Did the North American Company supervise and [966] review your construction budgets?

A. Yes. I made up a little list to help answer that question, which I thought was coming.

We had the following annual reports that I can recollect; The construction budget was one of the reports that they did watch very closely; and also the general annual report on automobile operating cost, and so forth.

We made annual and semi-annual reports of operating budgets; a quarterly consolidated balance sheet which was a consolidation of the balance sheet, simply a composite sheet for the various western properties.

Monthly we submitted the construction budget approval list.

We did not wait for the North American's approval on budgets, items that appeared in our annual or semi-annual budgets, but in order to permit them to know what our cash requirements would be we kept them informed at the end of each month as to what expenditures had actually been approved locally, and the progress made on these various items of the budget.

(Testimony of A. Emory Wishon.)

We had a current rate base report showing our rate basis kept in connection with rate fixing and rate analysis of the various properties.

We had our financial and operating reports monthly; new business reports; personnel reports; repurchase stock reports; revised operating budget estimates; standardized [967] statistical reports; tie line account, which we have been talking about; cash requirements; and the Western Power Corporation condensed income account and balance sheet—that is monthly.

Weekly we sent them precipitation reports; the weekly cash balance statements; and, as I say, daily we sent them our output report showing the trend, the load and the business.

I might say also that in addition to that once each month I wrote what is known as a general manager's letter to the general manager of the North American Company commenting on anything of specific interest, items of specific interest in any of these particular reports that I wanted called to their attention.

Q. Mr. Wishon, did the North American Company have to approve your general budgets before they were deemed to be authorized?

A. The general budgets were authorized by the Board of Directors of the respective companies first, but as far as I was concerned, yes, the North American approved the general budget before I deemed it finally authorized.

(Testimony of A. Emory Wishon.)

Q. And with respect to each of the items that you have stated were the subject of your report, did the North American exercise a constant supervision? A. They did. [968]

Q. Were you in constant communication with the North American? A. Absolutely.

Q. By letter, telegram and otherwise?

A. Correct; and making a couple of trips there each year, and occasionally having some of the boys visit the western job.

Q. Officers of the North American Company frequently visited and inspected the properties of the companies, did they?

A. Well, there was generally someone out here once or twice a year. I was generally East once or twice a year.

Q. When you went East on those trips were the affairs of these companies discussed in detail with you? A. Very thoroughly.

Q. What supervision did the North American Company exercise with respect to the finances of these companies?

A. As far as I was concerned I was on the operating end largely and the supervision of the financing was almost entirely in the hands of the North American Company.

Q. They furnished the cash requirements in excess of current receipts, did they?

A. At the time of the sale to the Pacific Gas and Electric Company I notice there were $19,000,-

(Testimony of A. Emory Wishon.)

000, odd dollars, of open accounts on the books owing to the North [969] American Company by the western companies.

Q. Is it a fact that during the period in question, 1927 to 1930, that there was an open account between the North American and these subsidiary companies? A. It is.

Q. Fluctuating from time to time?

A. From time to time and generally growing larger.

Q. So that at the time the Pacific Gas and Electric Company acquired the securities in this company the open account amounted to some $19,000,000? A. That is correct.

The Examiner: That is, an obligation of the operating company to the North American?

The Witness: That is correct.

By Mr. Phleger:

Q. With respect to engineering and construction programs and problems, were these submitted to the North American Company before they were authorized?

A. Not entirely, but on any major ones to some degree. The North American Company, in addition to its direct supervision, there were a number of committees of subsidiary companies and the North American Company, such as the Rate Committee, New Business Committee, the Engineering Committee, and such, and our men attended those

(Testimony of A. Emory Wishon.)

meetings from [970] time to time, as did the engineers, rate men, and the new business men of the other subsidiaries. On those occasions the North American—we had the benefit, we will say, of North American subsidiary advice, and from the North American Company itself as to their judgment; although the North American Company had no engineering staff or no advisory service particularly in that line, construction advice.

Q. Do I understand from your statement that the North American Company would promote the interchange between their subsidiaries, by way of meetings and otherwise, an interchange of information, advice and experience with respect to engineering matters, rate matters and so forth?

A. Yes.

In addition to that, we received each month what might be called a summary report of unit cost of operation, showing how the western companies compared with costs of other companies in other parts of the country, such as per line mile costs, kilowatt hour costs, average price at which electricity was being sold, and so forth, which was very helpful and very stimulating. It was a challenge at all times.

Q. What men in the North American organization did you have your chief contacts with?

A. Mr. Edwin Gruhl and Jim Black and Mr. Dame. [971]

(Testimony of A. Emory Wishon.)

Q. Besides those men did you know any other men in the North American organization?

A. Yes, a great many of them. I knew Mr. Dame, Mr. Doolittle, Mr. Gruhl, Mr. Black, Mr. Fogarty, Mr. Freeman, and others on the staff.

Q. Did you yourself attend any meetings of these committees of the North American subsidiaries?

A. I think I attended a committee meeting of the sales group one time in Cleveland, but that is the only one I personally attended.

Q. But other members——

A. (interposing) Other members, Mr. Euler, who was then general superintendent, really chief engineer of the Great Western Power Company of California, attended, Mr. Al J. Moore, executive engineer of the San Joaquin Light & Power Company, A. M. Frost, and several others attended such meetings. I am sure they did over that period.

Q. Were these subsidiary companies charged any fees by the North American Company for the services which it rendered to them during this period of 1927 to 1930? A. Yes.

Q. Can you read into the record the annual amounts so charged?

A. In 1927 there was a total charge, which is listed as including a portion of salaries of the officers and [972] employees in the North American Company engaged in the work of Western Power Corporation's subsidiaries, travelling expense, telephone and telegraph expense, a total of $16,898 to

(Testimony of A. Emory Wishon.)

the San Joaquin Light & Power and Midland Counties jointly.

That same year, for the same items there was a charge of $19,394.31 made to the Great Western Power Company of California.

The following year $24,573.55 was billed to the San Joaquin Light and Power Corporation and $26,039.50 to the Great Western Power Company of California.

In 1929 the San Joaquin Light was billed for $26,624.52 and the Great Western Power Company of California $28,192.39.

For the period from January 1, 1930 to May 31, 1930 the San Joaquin was billed $16,540.82 and the Great Western Power Company of California $17,270.77.

Q. Those charges ceased did they not, on May 31, 1930? A. That is correct.

Q. In 1930 the Pacific Gas and Electric Company purchased from the North American Company its holdings and those of the Western Power Company, and the San Joaquin Company, the Midland Company and in the Great Western Company, did it not? A. That is correct. [973]

Q. Will you state briefly what you know of that transaction?

A. I know they received mainly 125,000 shares of common stock of the Pacific Gas and Electric Company for their interest in the properties that

(Testimony of A. Emory Wishon.)

we have been discussing, and for writing off a $19,000,000 open account on the North American's books that had been owed to that company by the California subsidiaries. I have the amount—$19,180,776.

Q. That amount that you have just stated, Mr. Wishon, was owed by the subsidiary companies to the Western Power Corporation? A. Yes.

Q. State what took place with respect to the method of operation and the personnel of these companies following the acquisition of their majority stock by the Pacific Gas and Electric Company?

A. The Pacific Gas and Electric and the Great Western Power Company had been in direct competition, we will say, in Sacramento, Northern Sacramento Valley, or a portion of it, in the East Bay area, in the North Bay area, and in the City and County of San Francisco. There was a great deal of duplicate personnel. There were two city offices, two cashiers, two groups of salesmen working the same street, ringing the same doorbells. It was good tough competition. [974]

Immediately following the acquisition by the Pacific Gas and Electric Company—I say "immediately following", I mean in the next few weeks—the general office of the great Western Power Corporation, in fact, all of the western subsidiaries were moved down to 245 Market Street, and we immediately began the study of merging personnel and properties, with the result that over a reasonable

(Testimony of A. Emory Wishon.)

period there had been a number of hundred duplications eliminated in the way of jobs.

Also the properties were physically tied together, the more efficient plants of the combined properties were used and very decided savings made in operations.

Then, I think it was in—well, a year or so after they acquired the properties, a second circuit was run from below the sub-station, which is below Stockton, where the Tiger Creek lines cross the tie line that I previously mentioned, and a second circuit built into the San Joaquin Valley, adding to the capacity of that line, and our tie line operations and benefits were increased very, very materially.

Q. When were the physical properties of the Great Western Power transferred to the Pacific Gas and Electric Company?

A. I don't remember.

Q. Was it about in 1936, would you say?

A. That is about right. [975]

Q. But shortly after the 1930 transaction the properties of the Great Western for all—

A. (Interposing) For all practical purposes were taken over by them.

Q. (Continuing)—taken over and managed by the Pacific Gas and Electric Company?

A. That is correct.

Q. Who determined the method of taking over and the disposition of the personnel?

(Testimony of A. Emory Wishon.)

A. Mr. P. M. Downing, of the Pacific Gas and Electric Company.

Q. Now, with respect to the San Joaquin and Midland properties, what became of them?

A. The Midland Counties and the San Joaquin properties were quite remote from these properties. There was no competition and no duplication, as far as the Pacific Gas and Electric Company was concerned. In fact, for many years, both of those companies operated without competition. There was a time, in the early days, when the San Joaquin had a competitive territory in and around Tulare County and part of Kings, where the Southern California Edison operated what is known as the old Mt. Whitney system, built originally by them, and became a part of the Southern California Edison Company system. After that battle had gone on far [976] enough, the two companies went before the California Railroad Commission and asked for permission to exchange certain properties, in what we might call No Man's Land, in the fighting territory, and the territory was defined and the properties of one company were exchanged for properties of the other, and the customers of one company for customers of the other, until they got that fight out of the way.

As a result that territory was absolutely clean of competition, and it was almost a unit within itself, pretty well removed from the Pacific Gas territory, tied in, of course, with the tie-line, and there wasn't

(Testimony of A. Emory Wishon.)

the same opportunity for a saving in personnel on that property that there was in the Great Western Power Company.

Q. How long was it before the physical properties of the San Joaquin and Midland Companies were transferred to the Pacific Gas and Electric Company? A. (Pause.)

Q. 1938?

A. I think it was in 1938. I was about ready to say that—before the actual transfer was made.

Q. But immediately after the 1930 transaction was consummated, the Pacific Gas and Electric Company assumed control and supervisory management over the San Joaquin and [977] Midland properties, did they not?

A. That is right.

Q. And achieved whatever economies it was possible to achieve? A. Yes.

Q. You continued the operating head of those companies, did you not? A. I did.

Q. Did you move your office right into the office of the Pacific Gas and Electric Company at San Francisco? A. Yes.

Q. Did the Great Western Company and the San Joaquin and the Midland Company sever all relationship with the Western Power Corporation, and the North American Company immediately upon the consummation of the 1930 transaction?

A. Oh, yes, immediately.

(Testimony of A. Emory Wishon.)

Q. Thereafter they had no relations or communications with it?

A. No relation with it. We were a part of the Pacific Gas.

Q. And ceased, and terminated all connections and communications with the North American Company?

A. Yes, sir. To be specific, I think my last communication I ever had with the North American Company on a subject was a couple of weeks after the deal had been [978] consummated, when Mr. Gruhl was on the Pacific Coast attending a convention, and I talked to him at that time about trying to use his influence in connection with placing certain men, or certain policies, giving an equal break to Great Western and San Joaquin men in this merger. I was told by him that he couldn't take any position in the matter. I think that was after I was on the P. G. & E. Payroll about two weeks, that was about the last contact, or discussion of subjects that I had.

Q. Did he tell you in substance that all of those matters were for the decision of the Pacific Gas and Electric Company and that he was not in a position to interfere in any way with its decision, is that a fair statement?

A. I think more than that. I had been arguing for that plan to be incorporated as a part of the agreement involving the transfer. I had written

(Testimony of A. Emory Wishon.)

about it, and I had phoned about it, and prayed about it, and I got no help.

I had already gotten a reply from Mr. Gruhl saying he couldn't step into the picture, but I wanted to take another shot at it, and I did, and I got the same reply.

Q. Since 1930 what contacts, if any, have you had with the officers or agents of the North American Company?

A. That is since the properties were acquired by the Pacific Gas and Electric Company?

Q. Yes. [979]

A. I was in New York, I think, the following year, or at least I was in Atlantic City attending a convention, and I visited the North American office at that time, and most all of my old friends. Since that time I have seen Mr. Fred Doolittle on several occasions, and Mr. James Fogarty at the Grove on several occasions.

Q. Did you discuss Pacific Gas affairs with these men that you have mentioned since Pacific Gas and Electric acquired the properties?

A. Only in a general way; nothing specific.

Q. They were friendly meetings?

A. "How is everything going?"

Q. Yes. Have you had occasion to have any telephone or letter communications with them on Pacific Gas and Electric Company matters.

A. Not that I recall at the moment. I had a telephone call here when Mr., I think it was from

(Testimony of A. Emory Wishon.)

Mr. Fogarty or Mr. Doolittle, when Ed. Gruhl passed away. I think that is about the only telephone conversation I recall at the moment.

I have had personal letters from Mr. Doolittle, who has a son here in Cal-Tech., and he has been on the Coast several times since his retirement.

Q. But you have had no communication with respect to P. G. & E. business matters, have you?

[980]

A. Not that I recall.

Q. Since these properties, or the control of these properties, was acquired by the Pacific Gas and Electric Company from the North American Company in 1930, have you ever observed anything indicating that the Pacific Gas and Electric Company is or was controlled, directly or indirectly, by the North American Company, or that the management or the policies of the Pacific Gas and Electric Company are, or were at any time since that date, subject to a controlling influence, directly or indirectly, by the North American Company?

A. No.

Q. If the North American Company attempted to, directly or indirectly, control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, would you, as a director of that company, oppose such an attempt?

A. I certainly would.

(Testimony of A. Emory Wishon.)

Q. Do you think that the other San Francisco directors of the Pacific Gas and Electric Company would also oppose such attempts?

A. I know they would.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific [981] Gas and Electric Company, do you think it would be able to do so?

A. No; positively not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting of the Pacific Gas and Electric Company, and such an attempt were resisted by the management, and the San Francisco directors, do you think that the North American Company would be successful in its attempt?

A. I don't think they would have a chance.

Q. Will you state the reasons which you have for your last answer?

A. I think the Pacific Gas and Electric Company over the years has been considered and has been recognized as being strictly a California corporation, managed by local men who are in touch with the local problems, and have the feel of the public, and there would be a great resentment of having Wall Street step in and try to take control of anything that had been locally and very satisfactorily managed over all these years. I don't think

(Testimony of A. Emory Wishon.)

they would even have a start.

Q. During the time that the San Joaquin Light and Power Company was independently operated, that is, before its control was acquired by the Western Power Company, did [982] it sell a great deal of its preferred stock to residents of the territory in which it operated?

A. Yes. At one time, if I am not mistaken, it had 14,000 stockholders, that small company.

Q. And have a great many of those stockholders since become stockholders of the Pacific Gas and Electric Company by the exchange of their stock in the San Joaquin Company for stock in the Pacific Gas and Electric Company? A. They have

Q. Was it advantageous from an operating standpoint for the Pacific Gas and Electric Company, in 1930, to acquire not only the control of the Great Western Power Company, but also the control of the San Joaquin Light and Power Company?

A. Yes. It is to the best interest of the company and the customers.

Q. A question was asked of another witness, why the Pacific Gas and Electric Company would be interested in 1930 in acquiring the San Joaquin Light and Power Company, as well as the Great Western. What have you to say in that respect?

A. In the first place it is a rattling good company, if I happen to say so. It had a territory down there of 9,000 square miles. The possibilities of developing hydro and storage are very much bet-

(Testimony of A. Emory Wishon.)

ter on the northern system, [983] particularly the system of the Great Western. There is another situation that is very favorable to acquisition, and that is the matter of the peak loads.

For instance, the old Great Western peak was a summer peak serving largely a metropolitan load. The San Joaquin peak used to come in the morning of a summer time on account of the irrigation load. By combining the two it made available more idle plant capacity, the effective use of a great deal more idle plants.

Q. Now, the advantages that accrued from the original bringing together of the San Joaquin and Great Western properties continued, did it not, when those properties were acquired by the Pacific Gas and Electric Company?

A. Absolutely; yes.

Q. So that the same benefits that caused the properties of the San Joaquin and the Great Western originally to be brought together existed at the time that the Pacific Gas and Electric Company had its transaction with the North American Company?

A. Yes; and will continue to exist for many years in the future.

Q. As a matter of fact, does the San Joaquin system serve as a link to connect up the company operating in southern California with the Pacific Gas and Electric system? [984]

(Testimony of A. Emory Wishon.)

A. Yes. The San Joaquin is at the present time tied in with the Southern California Edison Company at two points; the principal one being at Magondun, south of Bakersfield, and has been receiving for the past several years, 75,000 kilowatts of capacity from that company.

Just recently the Pacific Gas and Electric Company has signed an agreement for the delivery from the Southern California Edison Company to the Pacific Gas and Electric Company, of 150,000 kilowatts for the years 1942, 1943 and 1944, and has an option on 100,000 kilowatts for the year of 1945.

I might say that since the P. G. & E. have acquired the San Joaquin Light and Power Company's properties, there has been no increase in the productive plant on the San Joaquin system, and that the power supplied to meet the demands of that system comes from the generating plants that were originally there at the time of the acquisition, plus the power delivered over this tie-line, plus the power that comes from the Southern California Edison Company.

Q. The fact that the San Joaquin properties are owned by the Pacific Gas and Electric Company has made it possible, has it not, to much more efficiently generate the power which is used on that system? A. Very much more.

Q. If the San Joaquin Company were an independent [985] company and forced to generate in its own territory the power required to serve that

(Testimony of A. Emory Wishon.)

territory, that could only be done at a much greater cost, is that right?

A. That is correct. Your hydro development in the north is much cheaper per kilowatt than the remaining hydro development along the Sierras and in the San Joaquin Valley.

Mr. Phleger: I think that is all.

The Examiner: Do you want to start your cross examination? It is now 20 minutes after four. Do you want to begin your cross examination or defer it until Friday morning?

Miss Calkin: If I start now I won't get through until after 5:00.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Remarks off the record.)

The Examiner: On the record.

We will recess now until 10:00 Friday morning, and then at the close of the Friday session we will recess until Monday.

(Whereupon, at 4:20 p. m., an adjournment was taken to Friday, November 22, 1940, at 10:00 a. m.) [986]

The Examiner: I think Mr. Wishon was on the stand at the time we recessed.

Will you resume the stand, Mr. Wishon?

(Testimony of A. Emory Wishon.)

I think Mr. Phleger had completed his direct examination.

Mr. Phleger: Yes.

A. EMORY WISHON

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination

By Miss Calkin:

Q. Mr. Wishon, do I correctly understand your testimony that in the fall of 1925 you were general manager of the San Joaquin Light & Power Company, the Midland Counties Public Service Corporation and the Great Western Power Company of California?

A. No. I was general manager and vice-president of the first two.

Q. Of the first two?

A. Yes. I did not become general manager of the Great Western Power Company until 1927.

Q. Who was general manager of the Great Western Power Company of California in 1925?

A. James B. Black.

Q. He was general manager at the time the North American [988] Company acquired its interest in the Western Power Corporation?

A. That is correct.

(Testimony of A. Emory Wishon.)

Q. Then in 1927 you became general manager of all three of the companies?

A. That is correct.

Q. At the time Mr. Black went to New York?

A. That is correct.

Q. Was your father still interested in the San Joaquin Light & Power Company in 1925 at the time control of that company was acquired by the Western Power Corporation? A. Yes.

Q. Did the acquisition of that control involve the exchange of stock of the San Joaquin Company for stock of the North American Company, or of the Western Power Corporation?

A. For stock of the Western Power Corporation and for cash.

Q. Was your father also interested in the Midland Counties Public Service Company?

A. Yes.

Q. So that upon the acquisition of control of those two companies by the Western Power Corporation your father had a substantial interest in the Western Power Corporation?

A. Not a substantial interest.

Q. He was a security holder?

A. He was a security holder. [989]

Q. Now, what happened to the Western Power Corporation after the securities of its three operating subsidiaries were acquired by the Applicant?

A. I don't know.

(Testimony of A. Emory Wishon.)

Q. Do you know whether or not your father still owns securities of the Western Power Corporation?

A. No, he does not. My father is deceased, but the Estate Company has no securities of the Western Power Corporation.

Q. Does it have securities of the North American Company?

A. It does. I think I can give that to you. The Wishon Watson Company, which is the Estate Company, holds, that is, purchased 650 shares of stock in the North American Company by purchase in 1930, and has acquired since that time additional shares as dividends and today they hold 959 shares of North American stock.

Q. What disposition was made of the securities of the Western Power Corporation?

A. I think we sold them.

Q. In other words, you did not own them at the time Western Power Corporation was dissolved in 1936? A. I can't tell you.

Q. If the North American Company distributed its securities, or its stock to the stockholders of Western Power [990] Corporation upon the dissolution of Western Power Corporation in 1936, the Estate Company of which you speak did not receive stock of the North American Company?

A. That is apparently correct; yes.

Q. Do you, or the Estate Company, own any of

(Testimony of A. Emory Wishon.)

the securities of the subsidiaries of the North American Company? A. We do not.

Q. What is the present extent of the holding of yourself and the Estate Company in the North American Company?

A. I own no North American stock; no member of my immediate family owns any North American Company stock. The Wishon Watson Company owns 959 shares of North American stock.

Q. Does it own any of the debentures of that company? A. No, it does not.

Q. Now, who is this Mr. Wilson that you spoke of as being one of the persons that carried on the negotiations between the Western Power Corporation and the San Joaquin?

A. Mr. Wilson was president of the Western Power Company, and had been associated with that company from its inception, according to Western Power history. I had never met Mr. Wilson, except on one occasion, I think, until Western acquired control of the San Joaquin and Midland Counties properties.

Q. Was he a westerner or an easterner?

A. I think Mr. Wilson, from what he told me, spent his early life up in around Oregon; then for a time he was in [991] San Francisco with some bond house or stock house, and then for a great many years he had been east.

Q. During the period after Western Power Corporation acquired control of the San Joaquin and

(Testimony of A. Emory Wishon.)

Midland Counties Company, and prior to the acquisition of Western Power Corporation by the North American Company, did you consider the San Joaquin Company and the Midland Counties Company as being controlled by eastern interests?

A. Yes.

Q. But that was only for a period of about seven or eight months? A. That is correct.

Q. The open account indebtedness due from the subsidiaries of Western Power Corporation, in the sum of some $19,000,000 which was cancelled in the 1930 transaction, was an amount due by those subsidiaries to their immediate parent, Western Power Corporation, was it not?

A. That is correct.

Q. During the period that the subsidiaries of the Western Power Corporation were controlled by it, and through the North American Company, did the North American Company do transfer work for those subsidiaries?

A. Well, I wasn't in very close touch with that part of the operation. I think they did, but I am not sure.

Q. Did those subsidiaries do any financing during the [992] period from 1925 to 1930?

A. Yes. There was one piece of financing, I remember.

Q. What, if anything, did you have to do with that financing?

(Testimony of A. Emory Wishon.)

A. Very little. I sat in on various discussions, but I had nothing to do with the details.

Q. Do you recall who managed the syndicate which purchased, did the underwriting in connection with that financing?

A. I remember one issue of San Joaquin for $25,000,000 which was handled jointly by Pierce, Fair & Co. and by Blyth & Co.

Q. Was that a bond?

A. That was a bond; yes.

Q. Who carried on the negotiations in respect to that piece of financing, if you know?

A. It was carried on, I think, by the North American representatives.

Q. Were the negotiations carried on here or in New York? A. I do not recall.

Q. Was that after Mr. Black had gone to New York or when he was still in the west?

A. It was after Mr. Black had gone to New York.

Q. You personally did not carry on negotiations respecting the price and the spread and such matters in connection [993] with that? A. No.

Q. Would you say they were carried on by Mr. Black?

A. Well, I notice here that the date of the issue was February 1927 and May 1927 and Mr. Black, if I remember correctly, left for New York somewhere along very early in the year 1927; so I couldn't say.

(Testimony of A. Emory Wishon.)

Miss Calkin: Will you mark these (indicating) for identification?

(The photostatic copes of the letters referred to were marked Commission's Exhibits 29 and 30 for identification.)

By Miss Calkin:

Q. Mr. Wishon, I hand you what has been marked for purposes of identification two documents, one marked Commission's Exhibit 29, the same purporting to be a letter dated April 23, 1930, from you to Mr. Edwin Gruhl, and as Commission's Exhibit No. 30 for identification, copy of a letter, what purports to be a copy of a letter from Mr. Gruhl to yourself, dated April 25, 1930, and I will ask you if you can identify those documents.

A. Yes, I do.

Miss Calkin: We offer in evidence Commission's Exhibit No. 29 and No. 30.

The Examiner: Have you seen them, Mr. Phleger?

Mr. Phleger: Yes. No objection. [994]

The Examiner: The letters as described will be received in evidence and marked Commission's Exhibits 29 and 30 respectively.

(The photostatic copies of the letters referred to were marked Commission's Exhibits 29 and 30 respectively and received in evidence.)

(Testimony of A. Emory Wishon.)

By Miss Calkin:

Q. Those letters constitute correspondence exchanged between you and Mr. Gruhl prior to the effective date of the 1930 transaction?

A. What is the date of that, please?

The Examiner: April 23, 1930.

A. Yes.

Mr. Phleger: May we identify what the effective date is? That was after the contract was made?

Miss Calkin: But not before the securities were exchanged. The deal was consummated in June, wasn't it?

Mr. Phleger: The parties were irrevocably bound to the transactions before those letters were written.

Miss Calkin: I don't think the properties were actually operated by the Applicant until some time in June.

Mr. Phleger: That is right.

By Miss Calkin:

Q. Does that constitute all of the correspondence between you and Mr. Gruhl on that subject? [995]

A. To the best of my knowledge.

Q. And I believe you testified that after the transaction became effective Mr. Downing worked out most of the personnel changes that were necessary by reason thereof? A. That is correct.

Q. When were you given the position which you now occupy with the Applicant?

(Testimony of A. Emory Wishon.)

A. I haven't the exact date in mind, but almost immediately, or within a week or so after the actual deal was closed why we moved our offices down to 245 Market Street with the Pacific Gas and Electric Company, and at that time I was appointed vice-president and assistant general manager of the Pacific Gas and Electric Company, and vice-president and assistant general manager of the Great Western properties, and at the same time elected president of the San Joaquin and Midland Counties properties.

Q. I have forgotten your testimony on direct examination, but were you an officer or director of Western Power Corporation?

A. I never was.

Q. Were you ever an employee of that company? A. No.

Q. So you had no relationship with that company to sever at the time this transaction took place? A. That is correct.

Q. From your experience as an employee of the subsidiary [996] of the North American Company is it your opinion that control by that corporation is harmful?

A. My opinion is that the North American Company could contribute nothing of a constructive nature to the Pacific Gas setup and that the control would be harmful; very harmful.

Q. Was there any change in your position with

(Testimony of A. Emory Wishon.)

the Applicant upon Mr. Black's becoming president of the Applicant?

A. No change in my position or title, except in October of 1936 I became a director of the Pacific Gas and Electric Company.

Q. Did you note any resentment among the consumers of the San Joaquin Company and the Midland Counties Company, or among its stockholders, at the time control of that company was acquired by Mr. Wilson's group? A. Yes.

Q. Was that very noticeable?

A. Quite noticeable; but inasmuch as the management, which was well known in the San Joaquin Valley over several generations, was continued why we were able to handle the situation locally. But there was resentment on the fact that any eastern group had taken control of the San Joaquin and the Midland Counties properties.

Q. As assistant general manager of the Applicant what, if anything, do you have to do with the affairs of the Vallejo Electric Light & Power Company? A. Nothing. [997]

Q. Have you never been consulted by Dr. Casper in regard to the operating problems of that company?

A. I have never met Dr. Casper to the best of my knowledge.

Q. Do you know who determines the policies of that company?

(Testimony of A. Emory Wishon.)

A. I assume the Board of Directors and the management of that company.

Q. You had no participation in the negotiations which culminated in the Applicant acquiring securities of the Western Power Corporation?

A. You mean at the time that the North American——

Q. (interposing) Yes.

A. I know nothing of the negotiations, but I have discussed it.

Q. Did you discuss the proposition with Mr. Hockenbeamer during the course of the negotiations?

A. Mr. Hockenbeamer discussed the proposition with me on several occasions; yes.

Q. And what was the substance of those discussions?

A. Largely a matter of discussion of the benefits to be derived as to organization.

Q. Did those discussions take place prior to the time the contract was signed or subsequent to that time?

A. No. They took place both before and after the con- [998] tract was signed.

Q. Who, in your opinion, was primarily the principal representative of the North American Company in connection with those negotiations?

A. Mr. James B. Black.

Q. And who represented the Applicant?

A. I think Mr. Hockenbeamer.

(Testimony of A. Emory Wishon.)

Q. You had no conversations with any representative of the Applicant, other than Mr. Hockenbeamer, prior to the time the transaction was put into contract form?

A. No, I did not on that subject.

Q. Can you summarize the benefits derived by the North American Company as a result of the acquisition of the securities of the Western Power Corporation by the Applicant?

Mr. Phleger: You mean the views which this witness has as to what they might have been?

Miss Calkin: Yes.

The Witness: May I have that question again, please?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. Well, I should say——

Mr. Bosley (interposing): I think that question is hardly clear. In asking the question you referred to our acquisition of the stock, or securities of Western Power Corporation. It [999] is ambiguous. Do you mean——

Miss Calkin (interposing): I will put the question again briefly.

By Miss Calkin:

Q. In what respects, in your opinion, was this transaction advantageous to the North American Company?

(Testimony of A. Emory Wishon.)

Mr. Phleger: That is the 1930 transaction?

Miss Calkin: That is right.

A. Well, in the first place there was a very definite and severe competition, and duplication of properties and organization of the subsidiaries of the North American Company in Sacramento, the East Bay, the North Bay and San Francisco areas that could be eliminated under Pacific Gas acquisition; a matter of further diversity of power supply for customer demand, and for various classes of business, and an extended tie line operation with the Great Western Power Company; and the North American receiving Pacific Gas stock would benefit as a stockholder in a more efficient operation of the properties, the same as any other stockholder.

That would be my reply to the question.

By Miss Calkin:

Q. In what respects would you consider the deal advantageous to the Applicant?

A. For the same reason, plus the fact that I think that the western subsidiaries of the North American Company could [1000] be more efficiently and better operated under the Applicant than they could previously by the North American Company.

Q. Did you at that time hear any discussion in reference to assurances by the North American Company as to the extent of its participation in the future operations of the Applicant?

A. I did not.

(Testimony of A. Emory Wishon.)

Q. So any assurances that were given by the North American Company at that time were given by Mr. Black to Mr. Hockenbeamer?

A. I don't know anything about that. I wasn't a director until 1936 of the P. G. & E.

Q. Did you hear any discussions relative to the representation by North American on Applicant's Board? A. No, I did not.

Q. Has anyone representing the North American Company ever told you in substance that the representation of that company on Applicant's Board was not as important since Mr. Black had become president of the Applicant as it was during Mr. Hockenbeamer's presidency?

A. They have not.

Q. Have you considered Mr. Black a representative of the North American Company since he became president of the Applicant?

A. I certainly do not.

Q. What was the extent of your contacts with Mr. Black [1001] from the period between 1930 and the time he became president?

A. I think I saw Mr. Black practically every time he was in San Francisco. We generally went out to club functions together. I am sure I saw him practically every time he was here. As far as discussions of business was concerned, any discussion was simply perfunctory and of a general nature. Most of our contacts were social.

(Testimony of A. Emory Wishon.)

Q. How frequently were you in New York during that period?

A. I have only been in New York once since the Pacific Gas and Electric Company acquired control.

Q. And when was that?

A. I think it was in 1931. I attended the National Electric Light Association Convention at Atlantic City and spent a number of days in New York.

Q. At that time did you see Mr. Black?

A. Yes. I saw all the North American friends of mine.

Q. What was the extent of your discussion with them during that period regarding the Applicant's business?

A. Nothing more than it had been before, very general, and "How is business?" that is about the limit.

Q. During the period between 1930 and Mr. Black's becoming president of the Applicant, did you ever seek his advice on problems pertaining to your work with the Applicant? A. Never.

[1002]

Q. Did he ever give you any suggestions regarding the operations of the properties with which you were connected then? A. He did not.

Q. Do you know who selects the proxies for the annual stockholders' meetings of the Applicant?

A. No. I have heard quite a bit of testimony about that. I do not know.

(Testimony of A. Emory Wishon.)

Q. Do you know anything about who makes up the list of directors to be included in the proxy statement? A. No, I do not.

Q. Do you know how the Applicant is advised as to who North American desires to be elected as its representative at the ensuing stockholders' meeting? A. I do not.

Q. Since you have been a member of the Board has Mr. Black ever advised the Board as to what North American's recommendations are with respect to a particular matter? A. Never.

Q. Have you ever asked Mr. Black what North American's desires were in a particular matter?

A. Never.

Q. What weight do you, as a director of the Applicant, think should be given to any suggestions North American might make?

A. I think I would give considerable weight to certain [1003] suggestions, based upon my experience with North American officials and knowing their experience, and I would act according to my best judgment as to the benefit of the suggestion as applied to P. G. & E.

Q. How would you compare the relationship between the Board and the Executive Committee under Mr. Hockenbeamer's presidency and under Mr. Black's presidency?

A. I was never a director under Mr. Hockenbeamer's presidency.

(Testimony of A. Emory Wishon.)

Q. Did you attend any meetings of the Executive Committee during his presidency?

A. I did not.

Q. When did you first begin attending meetings of the Executive Committee?

A. I was elected a director in October 1936 and began attending Executive meetings from that time on.

Q. At whose suggestion did you become a director of the Applicant?

A. Well, I was advised that I had been elected director by Mr. Black.

Q. Do you consider yourself a representative of the North American Company on the Applicant's Board? A. I certainly do not.

Q. How frequently did you confer with Mr. Earl during the period he was a director? [1004]

A. From time to time Mr. Earl conferred with me, until it became a little embarrassing, in the first month or so. It was largely on the matter of how to interpret his own notes. He was not thoroughly familiar with certain parts of the operations and he used to drop in my office and ask me if I could help him. Finally, I told him it was putting me in an embarrassing position, having come right from the Executive Committee and ask me how to interpret certain things when I was not a member of the Committee. I suggested that he try to interpret them himself. He was a close friend of mine and he agreed it was probably a better thing to do.

(Testimony of A. Emory Wishon.)

That is about the only conference I ever had with Mr. Earl.

Q. That was in the early part of 1931?

A. When he was—I forget when he went on as a director. I know it was shortly after I went down to the Pacific Gas offices. Probably for a month that took place. I couldn't understand the notes much better than he could because I didn't know the background of the notes. But I finally requested that he not embarrass me because I thought I might be misunderstood.

Q. Was Mr. Earl connected with the Western Power Corporation in 1925?

A. Oh, yes; he was president of it.

Q. Was he president of the Western Power Corporation [1005] prior to the time control of that company was acquired by the Wilson interests?

A. Mr. E. T. Earl, who was a big fruit packer on the Pacific Coast, was a brother of Guy C. Earl. It was E. T. Earl that acquired the lands, the Lake Almanor lands in the beginning which was the nucleus of the start of the Great Western Power Company.

Q. How long had Mr. Earl been associated with the Western Power Company?

Mr. Bosley: You mean the Western Power Corporation?

Miss Calkin: Corporation.

A. I don't know that Mr. Earl was ever associated with the Western Power Corporation. I don't

(Testimony of A. Emory Wishon.)

know that. But he was president of the Great Western Power Company when I came here in 1927. I don't know when he was elected. I know he was an attorney by profession and had been attorney for the company prior to the time he was elected as president.

By Miss Calkin:

Q. But you don't know whether he had been connected with the Great Western Power Company of California prior to the time control of that company was acquired by the North American people?

A. No, I do not—the North American people?

Q. Yes.

A. Yes, he had. I think I am right on that. I know [1006] he was associated with the Great Western Power Corporation, possibly as an attorney, but I don't know when he became president.

Q. Was he actively engaged in any business from 1930 to the time of his death?

A. Well, his own business; he was a man of substantial means and he continued his law firm and represented the North American on the Board of Directors and Executive Committee of the Pacific Gas and Electric Company.

Q. During the time that he was president of the Great Western Power Company of California was he devoting all of his time to the affairs of that company?

A. Yes; I should say he was.

(Testimony of A. Emory Wishon.)

Q. And he resigned as president of that company in 1930? A. That is right.

Q. Was Mr. Earl considered an operating utility man?

A. No. I didn't consider him an operating utility man.

Q. During the period of Mr. Earl's presidency of the Great Western Power Company of California was Mr. Black in active charge of the operations of that company? A. Yes.

Q. You were not a member of the Applicant's Board at the time Mr. Black was elected president?

A. I was not.

Q. Do you know anything about who suggested Mr. Black [1007] for the presidency of the Applicant, other than what you have heard the witnesses testify to here?

A. Yes. Mr. Fred Elsey told me that he had been suggested by the western directors.

Q. Did he tell you that prior to the time Mr. Black was elected or after that?

A. After he was elected, I think.

Q. Did you have any communications with any representatives of the North American Company regarding Mr. Black's election as president prior to the time he was elected?

A. No, not prior to the time he was elected.

Q. In your opinion would it be possible for the North American Company to exert a substantial influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even

(Testimony of A. Emory Wishon.)

though its representatives did not attend Board meetings or had any other contacts with other directors of the company?

A. I am of the opinion they could exert no influence even though they controlled Mr. Black.

Q. Why do you say that?

A. I know the Board of Directors, and just how closely they have been associated over a long period of years, just how much they stand for local control, and how independent they are in their actions.

Q. Are detail matters of the company's operations dis- [1008] cussed at the Executive Committee meeting? A. Yes.

Q. To what extent do you participate in those meetings?

A. The same as any member of the Executive Committee. We are given that privilege, although we are invited there as guests of the Executive Committee.

Q. Do you know the extent of Mr. Black's contacts with the North American representatives?

A. I do not.

Q. What members of the North American Company were you best acquainted with during the period from 1925 to 1930?

A. Well, I was best acquainted with Mr. Black, Mr. Gruhl, Mr. Fogarty, Mr. Dame; I knew Mr. Freeman, but not well, and a number of the people around the office.

Q. During that five-year period did you go to

(Testimony of A. Emory Wishon.)

New York frequently or were those men here frequently?

A. They made quite regular visits to California, went over the properties, various members, officers of the North American Company; and I was generally in New York office once or twice each year.

Q. Did you go there for the specific purpose of conferring with those people?

A. Well, I used to try to work in a convention on the side; yes, that was the specific purpose.

Q. Are you acquainted with Mr. Harrison Williams? [1009]

A. I have met Mr. Williams.

Q. Did you meet him during the period from 1925 to 1930?

A. I met him the first time I was ever in the North American office.

Q. Did he discuss with you the affairs of the companies with which you were then connected?

A. No. I thought he was an accountant. He was up in the room there and I had a very intimate conversation with him. I then asked Mr. Gruhl who this nice fellow, Williams, was. I had never heard of him before and I felt rather embarrassed afterwards.

Q. Mr. Wishon, do you send any reports to the North American Company? A. I do not.

Q. Does the department with which you are connected send any such reports?

A. Not to my knowledge.

(Testimony of A. Emory Wishon.)

Q. Are you familiar with Applicant's Exhibits 33 and 45?

A. I don't think I could identify them offhand.

Q. I wish you would examine those exhibits and tell me whether or not, to your knowledge, they include copies of all reports regularly sent by the Applicant to the North American Company?

A. (Examining exhibits). I have no knowledge of any [1010] report being sent to the North American Company, except from the testimony I have heard here. Prior to this hearing I knew of no report being sent to the North American Company.

Q. Since you have been associated with the Applicant what correspondence have you had with representatives of the North American Company?

A. I think it confines itself pretty well to Christmas cards. I think I have had correspondence with Mr. Fred Doolittle on several occasions, possibly since his retirement and possibly before that. He has a son who is a professor, or instructor, down at California-Tech and Mr. Doolittle has written me a number of times in connection with his son. That is about the extent of my correspondence.

Q. Do you know whether or not Mr. Doolittle is now associated with the North American Company?

A. I do not.

Q. Have you ever sought North American's advice in connection with the preparation of Applicant's budget? A. No.

(Testimony of A. Emory Wishon.)

Q. In your capacity as assistant general manager you are very familiar with the various construction projects which have been undertaken by the Applicant since 1930, are you not?

A. Quite familiar; yes.

Q. Do you know whether or not the North American Company has been consulted in reference to any major construction pro- [1011] jects of the Applicant since 1930?

A. Not to my knowledge.

Q. Do you know whether or not North American has approved any construction projects prior to the time they have been acted on by the Board?

A. Not to my knowledge; no.

Q. Have you ever heard anyone express North American's views with regard to the Hetch Hetchy situation? A. Never.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution plant in the City of San Francisco? A. I do not.

Q. Do you know anything about the protest by the North American Company in 1933 when the dividends on Applicant's common stock were reduced?

A. Mr. Hockenbeamer—I wasn't a director at the time—but Mr. Hockenbeamer told me on one occasion that there had been a protest.

(Testimony of A. Emory Wishon.)

Q. Did he make any further comment?

A. Not that I remember; no.

Q. You don't know what action Mr. Hockenbeamer took, if any, after he received the protest from the North American Company? [1012]

A. I do not.

Q. Do you know whether or not Mr. Black confers with representatives of the North American Company regarding proposed dividends on the common stock before the same are declared by the Board? A. I do not.

Q. Do you know whether or not the increase in the dividends on Applicant's common stock, which occurred in 1936, was done at the suggestion of the North American Company?

A. No, I do not.

Q. You were a member of the Board at that time, were you not?

A. I became a member of the Board in October 1936. I don't specifically remember the increase of dividends.

Q. You don't specifically remember what discussion occurred at the Board prior to the time that increase took effect? A. I do not.

Q. As assistant general manager of the Applicant what part, if any, have you played in the various financings of the Applicant which have occurred since 1930?

A. A very small part. I have listened in on some of the discussions.

(Testimony of A. Emory Wishon.)

Q. Have you had any part in the selection of the syndicate manager of any of the issues? [1013]

A. I have not.

Q. Do you know who selected the syndicate manager during Mr. Hockenbeamer's presidency?

A. I assume Mr. Hockenbeamer did, by approval of the Board of Directors and Executive Committee; but that is only an assumption.

Q. Are you acquainted with Stanley Russell?

A. I met Mr. Russell on one occasion.

Q. Was that during Mr. Hockenbeamer's lifetime?

A. I can't remember the year.

Q. What do you know, if anything, about the selection of Blyth & Co. to head the syndicate which purchased the $90,000,000 issue the Applicant put out in March or April of 1936?

A. Well, I know that that selection was made based upon the unanimous approval, according to the testimony, and incidentally my own judgment prior to the testimony, of the Board of Directors and the Executive Committee.

Q. Did Mr. Black ever discuss with you the selection of Blyth & Co. as syndicate manager of that issue? A. No.

Q. Did any representative of Blyth & Co. ever approach you in an effort to get that business for that firm? A. No.

Q. Are you acquainted with Blyth & Co? [1014]

A. Yes. I am acquainted with Mr. Blyth.

(Testimony of A. Emory Wishon.)

Q. Do you know any of the other members of that firm?

A. Yes. I know one or two of the salesmen. One worked for me many years ago, Mr. Shurtleff.

The Reporter: Spell it, please.

The Witness: I can't spell it.

Miss Calkin: S-h-u-r-t-l-e-f-f.

By Miss Calkin:

Q. Would you say that you were better acquainted with the representatives of Blyth & Co. than you are with the representatives of Lazard Freres & Co.?

A. Very much. I know no one with Lazard Freres & Co., except having met Mr. Russell.

Q. And your friendship with Mr. Blyth is closer than that with Mr. Russell?

A. Very much so.

Q. Do you know whether or not Mr. Black conferred with any representatives of the North American Company prior to the selection of Blyth & Co. to head the 1936 syndicate? A. I do not.

Q. Do you know anything about the participation of Dillon Read & Co. in the April 1936 syndicate? A. I do not.

Q. During the time you were associated with the companies which were subsidiaries of the North American Company, [1015] did Dillon Read head any business of those subsidiaries?

A. No; I am sure they did not.

(Testimony of A. Emory Wishon.)

Q. As a director of the Pacific Gas and Electric Company are you more favorable to the leadership of Applicant's business by Blyth & Co. than you would be toward the leadership of Lazard Freres & Co.? A. Very much so.

Q. Why?

A. In the first place, I think Blyth & Co. is an outstanding house, I know Charlie Blyth personally and his organization; it is a western house and I think a western house is in a better position to represent us in the distribution of securities, and has a greater knowledge of our securities and our properties, than any other foreign outfit could have.

Q. What part do you think that the North American Company should take in the formulation of the financial policies of the Applicant?

A. None; except their representatives on the Board of Directors should take part in it.

Q. To your knowledge has the North American Company played no part in the formulation of the financial policies of the Applicant?

A. As far as I know, no part.

Miss Calkin: I think that is all.

The Examiner: Any redirect? [1016]

Redirect Examination

By Mr. Phleger:

Q. Mr. Wishon, were you ever an officer or employee of the North American Company?

A. Never.

(Testimony of A. Emory Wishon.)

Q. Did you ever receive any compensation from them?

A. No, not from the North American Company; not to my knowledge.

Q. I show you Commission's Exhibits 29 and 30. You will recall testifying to a conversation with Mr. Gruhl regarding his making an effort to see that certain employees of the Great Western and San Joaquin were retained by the Pacific Gas and Electric Company after the 1930 transaction. Was your conversation with Mr. Gruhl along the same lines as that correspondence?

A. Very much, and probably a little more so.

Q. And, as I recall your testimony, it was to the effect that Mr. Gruhl disavowed any ability to, as I might term it, to protect those employees and said that he would not make any representation?

A. That is correct.

Q. You became a vice-president of the Pacific Gas and Electric Company in 1930, I believe you testified. When did you become what is known as a corporate vice-president?

A. I think it was in January of 1939. [1017]

Q. You might explain what the difference is between being a vice-president and a corporate vice-president.

A. No difference in salary. One is that "vice-president" is simply a title, given for convenience, I guess, and prestige, and an appointment; the

(Testimony of A. Emory Wishon.)

other is elected as a corporate officer of the company by the Board of Directors.

Mr. Phleger: That is all.

Miss Calkin: No further questions.

The Examiner: You may be excused, Mr. Wishon. Thank you.

(Witness excused)

The Examiner: We will take a recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

Mr. Phleger: Mr. Black, will you take the stand, please?

Whereupon—

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Black, will you state your name and residence for the record?

A. James B. Black. My residence is in San Francisco.

(Testimony of James B. Black.)

Q. Where and when were you born? [1018]

A. I was born in May of 1890 in Sycamore, Illinois.

Q. When did you come to California?

A. In 1902 my family came to California and settled in Oakland.

Q. Have you lived in California ever since, with the exception of the period from 1927 to 1935 that you were in New York? A. Inclusive, yes.

Q. You stated that your family located here in 1902. Where did they locate?

A. Oakland, California.

Q. Did they continue to live there?

A. Yes. My mother still lives there.

Q. Your father is not living?

A. My father is deceased.

Q. But from the time you came to California your family continued to live here?

A. That's correct.

State your education.

A. I went to the grammar schools in the middle west and Oakland and took my high school work at the California School of Mechanical Arts in San Francisco. From there I went to the University of California and graduated in mechanical engineering with the degree of Bachelor of Science.

That was in May, 1912? [1019]

A. In May of 1912, yes.

Q. Prior to your graduation had you had any experience in business or employment?

(Testimony of James B. Black.)

A. Well, I had the usual neighborhood jobs. In addition to that, I worked in summers all through my time at university and most of my time in high school in the lumber camps and in construction jobs up and down the Coast. I worked one summer as a constructional iron worker and another as a driver of a mule freight team in the Sierras, and various jobs as a laborer.

Q. What was your first employment after leaving the university?

A. Two weeks after I graduated I made application for employment with the City Electric Company, which was a subsidiary of the Great Western Power Company and owned all of the Great Western Power Company properties in San Francisco, and I was employed a few days afterward as a service inspector.

Q. Did your employment come about through your own efforts or through the efforts of others?

A. Entirely my own efforts, as far as I know. I went in and asked for the job and, after talking with three or four people, I was put on. I didn't know any of the people that I talked to before I met them at that time.

Q. What were your duties commencing with your employment and thereafter?

A. Well, as service inspector I worked with the cus- [1020] tomers and with the service that was given the customers. I called on them and tried to work out any difficulties that might develop. I later

(Testimony of James B. Black.)

got into sales engineering work; first, straight sales work and, later, into sales engineering work. I held various administrative jobs in the San Francisco Division. The properties of the City Electric Company later were taken over by the Great Western Power Company of California, which I think was in 1915 or 1916, which was the successor company to Great Western Power Company; and I served as a division manager and later was taken to the general offices of the company; served as Assistant General Agent and General Sales Manager, and was Acting General Manager, General Manager, and I was made Vice-President and General Manager in 1922.

Q. Did you also become a director at that time?

A. Yes.

Q. State generally what you know of the acquisition by Western Power Company of the controlling interest in the San Joaquin Light and Power Corporation and Midland Counties Public Service Corporation.

Mr. Bosley: You mean Western Power Corporation.

Mr. Phleger: Yes, Western Power Corporation. I think I said that.

Mr. Bosley: "Company", you said.

A. The acquisition of control of those properties took [1021] place as a result of negotiations undertaken late in 1924 and completed early in 1925. They were carried on initially in California, and I

(Testimony of James B. Black.)

assisted Mr. W. H. Wilson, who was then President of Western Power Corporation in his discussions with Mr. Balch and Mr. Meyer of Los Angeles, who represented some of the larger stockholding groups; and also worked with Mr. A. E. Wishon and Mr. A. G. Wishon in the development of the facts which were necessary in connection with the negotiations.

By Mr. Phleger:

Q. Following the acquisition of control by Western Power Corporation of the San Joaquin and Midland Counties securities did you become an officer of those latter companies?

A. I became a director immediately, but I think I was not elected an officer until after I had gone to New York in 1927.

Q. What took place physically following the acquisition of the control?

A. Well, almost immediately we undertook to construct the steel tower double-circuit transmission line from the Brighton sub-station, near Sacramento, located on the Great Western Power of California system to the Wilson sub-station, near Merced, of the San Joaquin system. That was completed, I think, in 1926 and the benefits from joint physical operation of the properties—a good many of them—were obtained through the operation of that transmission line. [1022]

Mr. Wishon and I, of course, collaborated closely endeavoring to work out any economies with respect

(Testimony of James B. Black.)

to the operation of the two systems. He at that time was Vice-President and General Manager of the San Joaquin Company and the Midland Company. We exchanged ideas and endeavored to develop the best points for the entire property group that either one of us had developed on our own systems.

The Examiner: Is that transmission line of which you speak the one that Mr. Wishon referred to as a "tie-line"?

The Witness: Yes.

By Mr. Phleger:

Q. It is a fact, is it not, that after that company was acquired in 1925 there was a very close cooperation between both companies physically and in a managerial way?

A. Yes, yes. We tried to operate them as nearly as possible as one company but maintaining the dual technical management.

Q. State briefly what you know of the acquisition later in 1925 of the control of Western Power Corporation by the North American Company.

A. Those negotiations were carried on entirely in New York and, with the exception of supplying information to Mr. Wilson, who carried them on on behalf of the Western Power Corporation, I had little to do with it until the later stages, [1023] and I was called to New York and sat in with some of the people who were carrying on the negotiations.

(Testimony of James B. Black.)

At that time they had pretty well taken shape. I can't say that I contributed a great deal to it.

Q. That acquisition of control by North American of Western Power Corporation took place in the latter part of 1925. Did you become a director and officer of the Western Power Corporation at a later date?

A. Yes. I was made Vice-President and director of Western Power Corporation, I think, in November of '27. It was late in '27 in any event.

Q. Is that '27 or '26?

A. '26. That's correct.

Q. When did you go east with the North American Company?

A. I went east, I think it was, the first week in February of 1927 and transferred by residence from San Francisco to New York.

Q. You became an officer of the North American Company, did you?

A. Later, yes. Later in that year I was made a Vice-President of the North American Company. At the time I went to New York I was the Vice-President and director of Western Power Corporation.

Q. You went east at the invitation of the North American Company, did you? [1024]

A. Yes, I did.

Q. It is a fact, is it not, that from your entry into business in 1912 until you went east in February, 1927 that your entire time had been spent

(Testimony of James B. Black.)

with the Great Western Power Company and, latterly, indirectly with the Great Western Power Company in California? A. That is correct.

Q. And you had no business or other connections with any utilities outside of the State during that period? A. That's correct.

Q. You have testified that later in 1927 you became a Vice-President of the North American Company. How long did you continue in that position?

A. Until late in November of 1935.

Q. At which time you resigned?

A. At which time I resigned.

Q. And ceased at that time to be an officer or employee of the company?

A. That's right. I resigned also at that time from the directorship and Vice-President of Western Power Corporation and, I think, also of the North American Utilities Securities Company.

Q. Mr. Black, were you ever a director of the North American Company? A. No. [1025]

Q. Were you ever a member of its Executive Committee? A. No.

Q. Where did you live when you were in the east?

A. I lived for a few months at Mount Calvary, New Jersey and commuted to New York; and later I bought a home in Westchester County and lived there during the balance of the period that I was in New York.

(Testimony of James B. Black.)

Q. What were your duties as a Vice-President of the North American Company?

A. Initially they were to be the point of contact with the California subsidiaries of North American or Western Power subsidiaries and to set up such machinery as might be necessary to bring about that contact between the North American Company organization and the Western Power group in order that they might keep informed as to what was going on. I had some special assignments having to do with the other subsidiaries of North American Company, but nothing that might be called of a regular, continuing nature.

Q. You were in California with the Great Western Power Company of California and associated with the San Joaquin Company during the period in 1925 until you went east in 1927, during which time those companies were subsidiaries of the North American Company. Did you hear Mr. Wishon's testimony yesterday as to the extent and nature of the control and supervision exercised by the North American Company over those [1026] companies?

A. Yes.

Q. Were his statements correct as to the extent and nature of that control?

A. I think they were.

Q. During the period after you went east from 1927 until the Pacific Gas and Electric Company acquired the North American securities held by it or by its subsidiaries in the Great Western and San

(Testimony of James B. Black.)

Joaquin Companies, was that control and supervision exercised and of a similar nature.

A. Yes. A good deal of it was through me.

Q. And you were the agency who was particularly active in behalf of North American Company in that supervision and management?

A. That is correct. I was not the sole agency, but they looked to me to do most of the work.

Q. State, if you will, what you know of the negotiations leading up to the acquisition by Pacific Gas and Electric Company in 1930 of the securities of the Great Western Power Corporation of California and the San Joaquin Light & Power Company?

A. Well, the first I heard of the desire on the part of the Pacific Gas and Electric Company to acquire the holdings of Western Power Corporation in the California subsidiaries was when Mr. Frank L. Dame, who was then President of the [1027] North American Company, called me into his office and said that he had word indirectly from Mr. Hockenbeamer that he would like to discuss with someone the possibilities of Pacific Gas and Electric Company acquiring the California properties of the North American group. He never told me just how that information came to him, but I believe it came through Mr. Fred Elsey to someone in New York, probably some banking interest, and then to Mr. Dame. Mr. Dame told me at that time that he was very loathe to sell control of the properties in California. He felt they had a great future,

(Testimony of James B. Black.)

or a good future, and he was particularly sensitive to any criticism that perhaps the North American Company had merely bought them originally in the first place for trading purposes and they were in a sense departing from their policy of many years of not buying properties for the purpose of immediately selling them but for the purpose of integrating them into large systems and building them up into large economic units. He said, however,—and this came out of the discussion—that there were certain factors out here, particularly that relating to the competition between the Great Western Power Company of California and Pacific Gas, which might justify a sale of the properties in spite of the North American Company policy, which I have described, and that he thought it was worthwhile investigating. And he asked me to go out and call on Mr. Hockenbeamer and develop the situation. [1028]

That I did almost immediately. It was, as I recall, late in or some time in September.

Q. Of 1929?

A. Of 1929. I think I advised Mr. Hockenbeamer that I was coming. I don't recall that specifically. But, in any event, there were no particular preliminaries in our getting down to business when I arrived.

Q. State now the substance of your negotiations with Mr. Hockenbeamer.

(Testimony of James B. Black.)

A. Well, before I left New York and on the way out I had assembled pretty well the facts with respect to earnings and the balance-sheet position of our companies out here. Of course, I had a pretty good knowledge of them already. I developed some ideas of my own as to what could be done by putting the properties together. And when Mr. Hockenbeamer and I met, we sat down together and I found that he had also developed ideas along that line, and we spent a good many hours in discussing them and found that we were in accord in some respects and quite wide apart in others. Those negotiations developed. We made a good deal of progress in the several weeks that we worked towards the development of the reconciliation of our ideas as to what could be done with the properties and where the benefits would accrue and what they would amount to, and also as to the form in which the compensation to Western Power should take if a satisfactory deal [1029] could be made.

Because of the financial disturbances at that time, which developed late in September and early October, it was deemed advisable to break off the negotiations. I returned to New York. Later, around in November, it appeared that the markets had quieted down and that we were in for a little breathing spell for a while, and I again returned to San Francisco and we developed our ideas further. And again the general situation became more difficult, and Mr.

(Testimony of James B. Black.)

Hockenbeamer and I also developed some divergences of opinion, which didn't appear in the early negotiations, and I again returned to New York.

Later—I think it was some time in January—Mr. Wishon called me on the telephone and said that he had walked back to his office, or down the street in any event, with Mr. Hockenbeamer and that they were window shopping and gossiping about their various businesses, their two businesses; and that Mr. Hockenbeamer rather casually remarked that it might be a good time to discuss these matters again, that there might be some hope that we might get together. And I knew enough of Mr. Hockenbeamer to know that he wanted to talk to me very soon after that when Mr. Wishon relayed the information to me. So I got in touch with Mr. Hockenbeamer and suggested that he come to New York this time, which he did. And in New York we went over very much the same ground that we had gone over in the previous two rounds, and came to an understanding. I [1030] don't believe that understanding was reduced to writing to any great extent; perhaps a single, typewritten page of the most essential parts of the understanding.

Mr. Hockenbeamer returned to San Francisco and I followed him shortly thereafter, and we worked out the definitive agreement between the North American Company, which undertook to cause Western Power Corporation to transfer its

(Testimony of James B. Black.)

holdings to Pacific Gas and Electric Company. And that agreement was signed by me and by Mr. Hockenbeamer, I think on March 29 of 1930.

Do you wish me to go ahead?

Q. Yes, go ahead.

A. I remained in San Francisco and gave what assistance I could in the preparation of the application to the Railroad Commission for approval of the transaction, and when that matter had been submitted I returned to New York. Subsequently the Railroad Commission approved of the transaction, and the actual transfer of the securities, the closing of the deal was made in New Jersey, Jersey City, in the early part of June. And I left that day to come to San Francisco or the following day—I'm not sure which—to attend a convention of the National Electric Light Association, which was being held there in the month of June—or here in the month of June. I was here a week or two and then returned to New York.

Q. Mr. Black, the contract to which you have reference, [1031] dated March 29, 1930, is the contract a copy of which has been introduced in evidence as Applicant's Exhibit 6, is it not?

A. Yes, that's correct.

Q. During the course of those negotiations at such times as you were in San Francisco did you keep officers of the North American Company fully advised of the progress of the discussions?

A. I did, yes.

(Testimony of James B. Black.)

Q. And with whom did you communicate particularly?

A. With Mr. Frank Dame, who was President of North American Company, and Mr. Edwin Gruhl, who was then Vice-President and General Manager of the North American Company.

Q. Previous witnesses have testified to the competitive situation which existed between the Great Western Power Company and the Pacific Gas and Electric Company in various areas, and I believe the document filed by the Railroad Commission of the State of California shows that approximately 90 percent of the revenues of the Great Western Power Company of California came from areas in which it was in competition with Pacific Gas and Electric Company. Would you say those figures are about right?

A. That is approximately correct, yes.

Q. And during the many years that you were with the Great Western Power Company you were familiar, of course, with that competitive situation? [1032] A. Quite.

Q. It was a common practice, was it not, to compete with the Pacific Gas and Electric Company for every bit of available business in that territory, was it not?

A. That's correct. And it developed at various times into competition for each other's business that they had on the lines.

(Testimony of James B. Black.)

Q. And not only competing for new business but they competed for the existing business of the other company? A. At times, yes.

Q. And I suppose during those many years you came in rather close contact with many of the Pacific Gas and Electric Company officials?

A. Quite, yes.

Q. Did the bringing into San Francisco of natural gas along the latter part of 1929 have any effect upon the negotiations?

A. It had a great deal of effect on the willingness of the North American Company people to dispose of the control of those properties.

Q. Will you explain your answer?

A. The general practice in sale of natural gas to large industries is to—in fact, it is necessary to —make rates which are based on the ability of the supplying company to cut off the service in case of necessity. In other words, it [1033] is a surplus gas. Now, those rates are not as rigidly fixed as the regular rates for the firm sale of gas. And the Great Western Power Company had a great deal of industrial business on its lines, a relatively large amount of industrial business, and its growth for many years had been along that line. And knowing the competitive situation as I knew it, I was quite apprehensive of the effect that the introduction of natural gas and its use in the competitive field might have upon the Great Western Power Company's fortunes in the future.

(Testimony of James B. Black.)

Q. It was your view and that of other North American officers, I take it, that the introduction of natural gas by the Pacific Gas and Electric Company had thrown the balance, as it were, in its favor?

A. It gave them a competitive weapon which they didn't have prior thereto.

Q. And the effect of which you were somewhat apprehensive? A. Yes.

Q. During the course of these negotiations and discussions which you have just described did you come in contact with anyone in the Pacific Gas and Electric organization or its officers or directors other than Mr. Hockenbeamer?

A. Mr. Beckett, Assistant Treasurer, prepared a great deal of information for Mr. Hockenbeamer and he was in and out of the discussions, but he took no part in them except [1034] with respect to explaining or discussing certain details which he had worked up or certain reports which had been prepared under his direction. I recall only one other instance, and that was in an afternoon when Mr. Hockenbeamer and I developed some rather wide differences of opinion, and he called Mr. Frank Elsey, who was a director and member of the Executive Committee and in whom Mr. Hockenbeamer had a great deal of confidence, and Mr. Elsey came down to Mr. Hockenbeamer's office and took part in the discussions for perhaps an hour or two. With that single exception I don't recall anyone else,

(Testimony of James B. Black.)

either officer or director, taking part in the discussions.

Q. That was Mr. Fred T. Elsey?

A. Yes.

Q. In these discussions was anything agreed upon with respect to the personnel of the companies whose securities were to be acquired by the Pacific Gas and Electric Company?

A. There was no agreement whatsoever. There was, of course, always the expressed desire on my part that they be treated with the greatest of consideration and that any prejudices or feeling which might have developed out of a rather intense competitive activity be put aside and that the best people in both organizations be saved for the combined organization. It was recognized at all times that there would have to be some reduction in forces.

Q. But it is a fact, is it not, that the manner, method [1035] and handling of the transfer of control and subsequently of the properties were to be entirely in the hands of the Pacific Gas and Electric Company? A. That is correct.

Q. Now, with respect to the position of North American Company as a stockholder in the Pacific Gas and Electric Company after the transaction, will you state what discussions there may have been on that subject?

A. Well, at the time of the—I don't know just where, but some place along in the negotiations—I think it was in the latter part of them—Mr. Hock-

(Testimony of James B. Black.)

enbeamer and I had some discussions as to the desirability of North American Company having some representation on the Board of Directors of Pacific Gas and Electric Company. And I took the position that, if this deal went through, it would probably be the largest single investment that the North American Company had; but I was the only one who had any great familiarity with the Pacific Gas and Electric Company system, and I had the greatest knowledge of the San Joaquin and Midland Companies of anyone in the North American Company organization, as such; and that I felt that they should have a representation on the Board of Directors in order that they might be assured of having such reports and other data which might be regularly furnished directors, and that they might have an opportunity if they saw fit to come in and express an opinion on any general policies which [1036] they felt might affect or jeopardize the value of their investment.

Mr. Hockenbeamer concurred in that. He agreed that it was entirely proper, and later in the discussions he and I agreed, had an understanding as to the extent of that representation. It developed that in our conversations certain reports were furnished regularly to members of the Executive Committee that were not furnished regularly to the members of the Board, and also that the Executive Committee discussed a great many matters which might

(Testimony of James B. Black.)

not come to the attention of he Board. And for that reason Mr. Hockenbeamer and I agreed that it would also be proper if the North American Company had a representative on the Executive Committee. That understanding was purely a verbal one and had nothing to do with the negotiations or the deal, as such.

Q. Mr. Black, was there any discussion as to whether or not after the transaction the North American Company would consider its position as being that of an investor merely, or whether it had any purpose or intention of attempting to become active with the idea of increasing its holdings and perhaps eventually obtaining control or becoming a dominating influence?

A. That was the understanding from the inception of the discussions. In fact, it was the question that Mr. Dame determined in his own mind before he allowed them to get to [1037] the point where they became very serious. He realized and we all realized that, if the transaction took place, the North American Company would be giving up control of its properties and would be taking a position as an investor in the Pacific Gas and Electric Company.

Mr. Hockenbeamer and I discussed that many times, and Mr. Hockenbeamer told me repeatedly that he would not consent to any transaction which would at that time or at any time in the future in his judgment jeopardize the control of Pacific Gas and Electric Company by the local directors who,

(Testimony of James B. Black.)

and with their predecessors, had developed it over the past 75 or 80 years. He said that even if he was foolish enough to consent to a transaction which would change the control that he wouldn't get one vote on his Board of Directors for it. And he told me that he had satisfied himself that control had not been jeopardized and, in his opinion, it would not be. And under those circumstances he was willing to go ahead with the deal.

Q. Is it fair to say, therefore, that on the part of the North American Company it was recognized and had been decided by it that, if it went forward with the transaction, it would yield for all future times the possibility of control and that it would assume and be in the position of an investor merely?

A. That was recognized as the fact.

Q. Yes. And the recognition of that fact by North [1038] American Company was communicated to Mr. Hockenbeamer? A. Oh, yes.

Q. And constituted a premise of your future discussions?

A. Yes. Mr. Hockenbeamer and I discussed it many times, and I think he understood quite fully my position in the matter and my recommendations to the North American Company officers, which were unnecessary.

Q. Was this discussion as to representation, and so forth, deemed to be for any duration?

A. No. There was never any time limit put on it. It was just a general understanding between Mr.

(Testimony of James B. Black.)

Hockenbeamer and myself that that would be done. There was nothing ever said about how long it should last or any considerations as to changes if conditions changed in the future.

Q. Was there any agreement between Mr. Hockenbeamer and yourself that there would be three directors? A. That is correct.

Q. And a member of the Executive Committee. Do you know how that number happened to be agreed upon?

A. Well, it was agreed upon that probably the North American Company, with the number of votes that it would have, with nearly a 20 percent interest as of that time—about 19 percent, I think—could probably elect three directors by cumulative voting, if they chose to do so; and Mr. Hockenbeamer felt that it was entirely proper and I felt that it was entirely [1039] proper to accomplish perhaps the purpose which both of us had in mind. A lesser number would have been just as effective, but there was no certainty that I would live forever or would be with the North American Company forever, and it was felt desirable that other officers of the North American Company should be burdened with some of the responsibility for knowing something about the Pacific Gas and Electric Company and be in a position that, if they saw fit, they could intelligibly express themselves on its policies in the future.

(Testimony of James B. Black.)

Q. And who did the North American Company name as its representatives?

A. The North American Company named Mr. Edwin Gruhl, who was then Vice-President and General Manager; Mr. Guy C. Earl, who prior to the taking over of the properties of the Western Power Corporation of California was President of the Great Western Power Company of California; and myself.

Q. And Mr. Earl became the representative on the Executive Committee?

A. He did eventually. I was elected first, and the reason for that was that—or appointed first, and the reason for that was that we were discussing at that time with Mr. Earl just what his relationship should be to the North American Company, and until that matter was settled I went on the Executive committee. But I attended no meetings, perhaps one meeting, and I think I served only for two or three weeks [1040] or until the next meeting of the Board of Directors when Mr. Earl replaced me. He served until his death in June of 1935.

Q. Did he remain in the employ of the North American Company?

A. He became an employee of the North American Company. He was President of the Great Western Power Company of California and, as such, received his remuneration from that company. But when he was made a member of the Executive

(Testimony of James B. Black.)

Committee of Pacific Gas and Electric Company he was put on a retainer or salary—I don't know what the technical name would be—of $12,000 a year by the North American Company

Q. Something has been said earlier in these proceedings as to why the Pacific Gas and Electric Company would want to acquire the San Joaquin and Midland securities and not simply those of the Great Western. What do you know about that?

A. Well, by the acquisition of the San Joaquin and Midland companies they rounded out a fully integrated system here which is serving a single economic area. That is, the two great valleys: The San Joaquin and the Sacramento, and the San Francisco Bay area and the Coast areas contiguous thereto. And the southern limit of that area would be the Tehachapi Range, which is a geographical and, I think, pretty generally the trade boundary between the southern part of the State and the northern part of the State. It would, in effect, enable this very large system with its resulting economies to [1041] serve the entire economic area from the Nevada and Oregon lines to that boundary between northern and southern California.

Q. During your discussions with Mr. Hockenbeamer, as you have related, you discussed the nature and extent of reports that might be furnished the North American representatives on the Pacific Gas and Electric Board. That is true, is it not? A. That's correct, yes.

(Testimony of James B. Black.)

Q. I show you Exhibits 45 and 33, Applicant's Exhibits 45 and 33. Do those reports and documents generally constitute the reports and documents that you discussed with Mr. Hockenbeamer during the course of negotiations as being those that you thought that should be sent to the North American representatives?

A. Yes. There are probably some additions or subtractions as the form of the reports or method of reporting changed. But that is substantially correct.

Q. During the period between June 30, 1930 and November, 1935, when you became President of the Pacific Gas and Electric Company, what contacts did you have with the Pacific Gas and Electric Company and its officers?

A. Well, I came to California about once a year. I had no regular time of visiting, but I tried to make it about once a year. During the time that I was in California I spent most of my time in San Francisco. I spent always a few days in Los [1042] Angeles. I would call on Mr. Hockenbeamer and discuss generally the affairs of the company with him. I would talk briefly with Mr. Earl. I called on my business friends here in San Francisco, among them the directors of the Pacific Gas and Electric Company. I used to drop in and see Mr. Downing, Mr. Coghlan, Mr. Vincent, Mr. Marquard and others and officers of the Pacific Gas and Electric Company whom I had known for many years. They

(Testimony of James B. Black.)

were only social calls. We never discussed the business of the company, and usually I dropped in to see Mr. Hockenbeamer the last day or so I was here and, if I heard anything around town that I thought he ought to know about that perhaps he did not know about, I used to discuss it with him. That, I think, covers the visit. I spent, as I say, most of my time in calling on my acquaintances and friends here.

Q. About how long did you spend out here on these trips?

A. Oh, in San Francisco I should say I averaged a week.

Q. What contacts did you have with these same men in New York?

A. When they came to New York they would usually call me up. Occasionally we would have lunch together and occasionally they would drop in and call on me in New York at my office.

Q. Were these calls generally of a business or of a [1043] social nature?

A. Well, they were a mixture of both. The calls in New York were almost entirely social. When Mr. Hockenbeamer came to New York I used to discuss with him generally the affairs of the company and the affairs of the industry and the condition of the state, business and politically. And they took pretty much the same pattern as they did when I came to San Francisco.

Q. During that period did you or anybody else

(Testimony of James B. Black.)

to your knowledge representing North American Company make any requests or recommendations to the Pacific Gas and Electric Company or its officers as to how it should conduct its business?

A. No. The only—well, that is rather hard to answer. I did make some suggestions early in, I think it was, June or July perhaps of 1930 with respect to the personnel of the organizations. In fact, I talked rather earnestly with Mr. Hockenbeamer several times on that. But after I left San Francisco in June of '30 I don't think I ever had any discussions with him on that point except to make an inquiry perhaps once in a while as to why an individual might be getting along or why a change would be made. That was largely out of the desire to satisfy myself as to how things were going. I never discussed any such matters prior to the time any decision was made by him. I did discuss with him—he initiated the discussions—early in 1935 the make-up of the [1044] syndicate which—perhaps that is too strong a statement—I would say, discussed with him the relative strength and desirability of including certain underwriting groups in the syndicate which he was forming in 1936 for the initial underwriting which took place in that year, and he called me several times during that year and I gave him my opinion as to prices that he ought to get for bonds that he was selling, and he also wanted my opinion a couple of times on the likely course of the bond market.

(Testimony of James B. Black.)

Q. That was in 1935?

A. That was in 1935.

Q. Yes.

A. I never discussed with him the other incident, which came out of the reduction in the dividend rate in 1933, but I did discuss with Mr. Earl and communicated with Mr. McKee in connection with that incident.

Q. What was the attitude of the North American Company with respect to the cut in the dividend in 1933?

A. Well, at that time Mr. Dame and I were on the Board of Pacific Gas and Electric Company, and also Mr. Earl; and it was Mr. Dame's feeling and mine that, first, on an important matter of that kind that all members of the Board should have a chance to express their opinion. It was the opinion of Mr. Dame and myself that the reduction at that time was premature, that we should go along—the Pacific Gas and [1045] Electric Company should go along at least that quarter and perhaps another quarter before taking any such step. There were great hopes at that time that business might take a turn up, and we felt that a stock of the type of Pacific Gas and Electric Company, which was of an investment nature, could well afford in view of the cash position of the company and its surplus to continue to pay dividends out of surplus if there was a reasonable expectation that within a reasonable period they might again

(Testimony of James B. Black.)

be earned. There was never any doubt in our mind that that time would come. It was just a question of when. And I called Mr. Earl—that action—do you wish me to tell about my recollection of that action? Q. Yes.

A. I knew nothing of the action of the Board in reducing that dividend, nor did Mr. Dame, until I was either informed by Mr. Earl on the telephone that night or I read it in the papers the next morning, I don't remember which. And I called Mr. Earl and asked him what his opinion was of the situation, and he said that if he had had the sole decision he would have continued the dividend at least for a while. But he brought up the question of public policy which, of course, we were too far away, both Mr. Dame and myself, to have a very good understanding of. But he said that he felt, in view of the dividend reduction having been declared by nine members of the Board only, it ought to be reconsidered. [1046] I told him that I felt the same way and I knew that Mr. Dame felt the same way, and about that time Mr. Miller came into the office—Mr. C. O. G. Miller. He called on us and he had learned of the reduction from reading it in the newspapers, and his views were almost exactly the same as the views of Mr. Dame and myself. And as I recall, Mr. Miller joined in a telegram to Mr. McKee urging that he use his influence to have the matter reconsidered, and Mr. Dame called Mr. Hockenbeamer on the telephone

(Testimony of James B. Black.)

and gave him his views and mine and urged Mr. Hockenbeamer to have the matter reconsidered, if possible. It was never reconsidered. As far as I know, the reconsideration was never discussed at the Board meeting.

Q. What instructions generally did Mr. Earl have from the North American Company?

A. Well, he was expected to collect all of the reports and the minutes of previous meetings which were furnished to directors and to the Executive Committee and to forward them to the President of the North American Company immediately after meetings. He was asked also to mention any important matters that came up for discussion in the Board or decisions that were made, matters of policy which he thought that the North American Company, as large stockholders, and Mr. Dame and myself, whoever were the North American officers members of the Board, would be interested in. That he did.

Q. With the exception of the dividend matter that you [1047] have just referred to, do you recall ever having communicated the views of yourself or Mr. Dame of the North American Company with Mr. Earl with respect to his action on any pending matter?

A. No, I do not. I had very little contact with Mr. Earl, except when I came out here I always called on him. He was a good friend of mine, and I always made it a point to call on him and we

(Testimony of James B. Black.)

always discussed the affairs of the company, but I spent very little time with him and I had no regular communication with him. As far as I know, that dividend matter was the only matter that we ever discussed from New York—that is, that I ever discussed from New York with him.

Q. With the exception of Mr. Hockenbeamer's asking your views and discussion regarding interest rates, market and spread in connection with the 1935 refunding operations, do you ever recall of you or anyone else in the North American Company ever having been asked your views during that period of 1930 to 1935 on any pending matter while it was under consideration?

A. No, I have no such recollection. I don't think there ever was any such request.

Q. And did you ever, with the exception of the dividend matter, express your views or that of the North American Company or any of its officers with respect to any matter which was pending before the P. G & E.?

A. Well, probably in the discussions with Mr. Hockenbeamer [1048] on matters—that is, in the times that we met—I probably did express opinions on subject that might come up. But they were purely expressions of opinions and I never made any effort whatsoever to direct or influence his judgment on them because I knew that his judgment would be far superior than mine, with my infrequent contacts. I don't recall any such inci-

(Testimony of James B. Black.)

dents, but in the very nature of the discussions I am sure that they would come up.

Mr. Phleger: Mr. Examiner, I suggest that this is an appropriate time to adjourn.

The Examiner: All right. We will recess to 2:00 o'clock.

(Whereupon, at 12:15 p. m. a recess was taken to 2:00 o'clock p. m. of the same day.)

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing.

Whereupon—

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

By Mr. Phleger:

Q. Mr. Black, in connection with the negotiations between the North American Company and the Pacific Gas and Electric Company in 1929 and 1930, was any discussion had as to whether or not the transaction should take, one, in the form of the

(Testimony of James B. Black.)

acquisition of the stocks by Pacific Gas and Electric Company, and the payment therefor should be made in its own stock, or in stock and part in cash, or all cash?

A. Yes. We discussed all possible combinations of cash, preferred stock and common stock, and it was agreed fairly early in the discussions that the only way to do it successfully would be through the exchange of Pacific Gas and Electric Company common stock for the securities to be taken over.

Q. What reasons were given during the course of negotia- [1050] tions for that conclusion?

A. Well, first, the principal assets that Western Power Corporation had were the common stocks of its subsidiaries, which would indicate an exchange of common stock. There was, perhaps, a shortage of equity investment in those companies which had been recognized by an advance by Western Power Corporation to the subsidiaries of, I think, $16,000,000 at the time that the negotiations started, and by the time they were completed and the transfer made it was in excess of $19,000,000. Quite likely, if the North American Company had continued to hold control of these companies in California, they would have converted at least a portion and, perhaps, a substantial portion of that advance into common stock investment.

Also, the North American Company had an income problem to meet and there was no way that they could see which would approximate the solu-

(Testimony of James B. Black.)

tion of that problem except to have the payment made in common stock, which was then carrying an 8 percent dividend. As it was, the North American Company's income from the investment which, of course, was on a cash basis, was slightly less than its consolidated income from the holdings which were exchanged for the Pacific Gas and Electric Company common stock, which affected the earnings per share of North American common.

Q. Was it the desire of both parties, as the discussions had proceeded for some time, that the transaction be consummated [1051] in the form that it finally was consummated in? A. Yes.

Q. What were the principal differences which led to the protracted negotiations?

A. Well, they largely centered around the estimates of what could be done by the consolidation of the properties in the way of economies, and who should share in those economies, how the economies should be shared in as between the then common stockholders of Pacific Gas and the new interest in common stcok. That really was the root of the discussions and, of course, it developed into all sorts of ramifications from there on.

Q. I take it from that that the real discussion was over the price?

A. Oh, yes. That was the center of the discussion.

Q. And the price, in turn, resolved itself into

(Testimony of James B. Black.)

questions as to who should participate in and a relative participation in the economies?

A. That is right. Of course, the whole thing centered around how much was to be paid and the initial figure that I had in mind was 1,000,000 shares of P. G. & E. common which, at $2 a share, would have made the North American Company substantially whole on an income basis; and Mr. Hockenbeamer's ideas, while never very definite, centered around a million and one-half shares for the entire holding, including the [1052] advances, and then got down somewhere around a million and one-half shares for the common and preferred alone and the advances to be taken care of in some other way perhaps.

Eventually Mr. Hockenbeamer and myself, I think we were pretty well pointing toward 1,800,000 to 1,900,000.

Q. With the final result as shown in the contract itself? A. Yes; 1,825,000.

Q. Mr. Black, immediately after the transaction what became of the $19,000,000-odd dollars indebtedness of the San Joaquin, Great Western Companies to the Western Power Corporation?

A. That was cancelled in accordance with the agreement.

Q. Were all other relationships between the North American Company and the Western Power Corporation on the one hand, and the San Joaquin

(Testimony of James B. Black.)

and Great Western Power Companies on the other hand cancelled?

A. Yes, with one minor exception: Mr. Hockenbeamer asked me to stay on as the Vice-President of the Great Western Power Company of California and of the California Electric Generating Company, a subsidiary of the Great Western Power Company of California, without salary for the purpose, and the sole purpose, of signing stock certificates, preferred stock certificates, which might be transferred in New York.

Q. How long did you remain in that capacity? [1053]

A. I remained in that capacity until those companies were dissolved. May I correct that? I remained as the Vice-President of those companies until 1935, November 11, when I was elected President of the Pacific Gas and Electric Company, and President of the California Electric Generating Company.

Q. Do you recall how many meetings of the Board of Directors of Pacific Gas and Electric Company you attended between 1930 until election as President?

A. Yes. I attended four; one was the meeting at which I was elected in June of 1930. One was some time in 1931 or 1932 when a meeting was held during one of our visits to San Francisco. The last two times were at two meetings which were held only a week apart in September of 1935. I happened to

(Testimony of James B. Black.)

be in San Francisco at the time and the company was preparing a registration statement which required frequent meetings of the Board, and I happened to be here just at that time, for about a week or ten days, and they held two meetings which I attended.

Q. Do you remember when Mr. Earl died?

A. Yes.

Q. That was in June of 1935?

A. June 1935; yes.

Q. And you were out here a month or so later?

A. I was out here in September of 1935.

Q. Did you have any discussions with Mr. Hockenbeamer, or make any suggestions that a successor should be appointed [1054] to Mr. Earl on the Executive Committee?

A. Mr. Hockenbeamer and I had some discussions of it, and we were both trying to think of a suitable local man and neither one of us had any ideas that were worth very much, and we just dropped the subject. He had, subsequent to that discussion, continued to send the reports which Mr. Earl had been sending on to me, and there just wasn't any particular purpose in changing that setup, and we just dropped the subject. It would probably have gone on indefinitely.

Q. So that following Mr. Earl's death, and your visit to San Francisco, you returned to New York without having made any suggestion for a successor and with the matter dropped, as you say?

(Testimony of James B. Black.)

A. That is correct.

Q. Now, that was September 1935 and you saw Mr. Hockenbeamer during that visit, did you not?

A. Yes.

Q. Did anyone anticipate that Mr. Hockenbeamer would not live very long after that time?

A. I certainly didn't. He looked as well to me as he ever had and I certainly anticipated that he would live for many years.

Q. When did you first hear of his death?

A. Mr. Downing wired me that he had died. I didn't even know that he was ill. [1055]

Q. That was on November 11, 1935?

A. Yes.

Q. What did you first hear with respect to your consideration as a possible president of the Pacific Gas and Electric Company?

A. Mr. Fogarty, J. F. Fogarty, who was then President of the North American Company, told me that Mr. Miller, Mr. C. O. G. Miller, had called him on the telephone—I think it was the day before, I am not quite sure as to that time—and had asked that he release me as Vice-President of the North American Company in order that I might be elected President of the Pacific Gas and Electric Company.

He said, Mr. Fogarty told me that Mr. Miller had told him that the directors had had some informal meetings and that they had come to that conclusion, and that they would like permission to talk to me.

(Testimony of James B. Black.)

Mr. Fogarty didn't indicate to me that he had agreed, and I protested to him that he should agree, and the discussion broke off without any commitment on his part to agree.

Later, I think the next day—I know it was some little time and I don't recall the exact interval but probably the next day—he told me he had again talked to Mr. Miller and he had agreed to release me, and he had agreed with Mr. Miller that it would be proper for Mr. Miller to call me.

Very shortly Mr. Miller did call me and he told me sub- [1056] stantially what Mr. Fogarty had told me, and asked me if I would take the position if the Board elected me, and I told him I would be delighted to do so.

He then asked me when I could come to California. I told him I would come within a few days, and I did.

In the meantime the Board of Directors of the Pacific Gas and Electric Company had elected me President.

I was in San Francisco for the better part of a week and then I returned to New York and was there for a couple of days, finally winding my affairs up there, and I came to California with my family about the first week or the second week of December.

Q. Do you recall, Mr. Black, the conversation over the telephone with Mr. Miller, after the first conversation you have testified to, in which he asked

(Testimony of James B. Black.)

you with reference to your future relations with the North American Company?

A. Yes. He called me very shortly—I think it was only a few minutes after, certainly not longer than during the day sometime—and said that one of the directors had raised the question as to whether I was going to continue any association with the North American Company.

I told him most certainly not, and he said that was his understanding, but that the question had been raised and he wanted to be in a position to assure the director that there would be no connection whatsoever between me and the North [1057] American Company or any of its associated companies.

Q. When, with relation to your departure for California, did you resign from your various positions with the North American Company?

A. It was either the day I was elected President or the day before; I don't recall which. It was either November 19th or 20th.

Q. And before you came out to California?

A. Oh, yes; and before I was elected.

Q. So that you resigned your positions with North American prior to your election as President of the Pacific Gas and Electric Company?

A. Yes. It may have been the same day, but it was done, as I had my letter of resignation in, before any action was taken out here.

(Testimony of James B. Black.)

Q. State, Mr. Black, what contacts you have had with the North American Company, its officers or agents, since you became President of the Pacific Gas and Electric Company.

A. I have been to New York twice; once in 1938 when I went to attend a convention of the Edison Electric Institute at Atlantic City, and then I went on to New York and spent about a week there. I visited in the offices of the North American Company at that time, and called on the officers, called on Mr. Williams, and perhaps spent altogether two or three hours in conversation with them. [1058]

The rest of the time I spent calling on former business friends up and down the street in New York, perhaps 25 or 30 of them, presidents of banks, partners in the investment banking houses, and other friends in industry there that I had known.

The second time was in June of this year when I went to New York to attend a Board meeting of the Equitable Life Assurance Society of New York.

After I had finished that business I did about the same thing that I did in 1938, spending about a week around New York.

Q. During your visits, those two visits since 1935, did you discuss Pacific Gas and Electric Company affairs with the North American officers?

A. Yes. In a general way we discussed the affairs of the company, what the prospects looked like for business for the next few months, and the com-

(Testimony of James B. Black.)

pany's general position with the public and financially, and the general condition of business in the State, and the prospects for development in the future here in the State generally which, of course, is reflected in our development.

We talked generally about the position of the industry and had a general conversation about the different companies in the industry.

The war was also discussed, politics, and the usual things [1059] that men talk about when they get together.

Q. Did you ask for any advice or recommendations from them with respect to the P. G. & E. matters?

A. I did not. I have never asked for any advice since I have been here, except that I have called them occasionally, at the time we were selling some bonds, selling our bonds in 1936, to get their advice on what the market might be doing, the bond market might be doing in the immediate future, and get their ideas on prices for bonds, what the market might stand, as we got closer to the dates of our offerings.

That is the kind of information, of course, that I was getting from all directors and from any source which I could get.

Q. That was information, rather than advice, was it not? A. Yes.

Q. Were your conversations with them on those two visits any different than your conversations had been or would be with any large stockholder?

(Testimony of James B. Black.)

A. No.

Q. As a matter of fact, you have had conversations from time to time, more or less frequently, of the same character with other large stockholders, have you not? A. That is correct. [1060]

Q. For instance, have you had conversations with the President of the Sun Life Assurance Company on such matters? A. Yes.

Q. Now, how often, and on what occasions have you seen North American officers in San Francisco since November 1935?

A. Mr. Fogarty is the only man, North American Company officer, who has visited San Francisco, with the exception, I think, of one visit perhaps by Mr. Doolittle. He comes out, has come out, I think, with the exception of this year, to attend the Bohemian Grove Encampment. He usually gets in here on Saturday and goes immediately to the Grove where he spends a week or two weeks, and returns Sunday, and usually leaves on Monday for the east.

I try to get up to the Grove during the weekend and I see him up there occasionally.

Q. Have you discussed business affairs with him on those occasions?

A. No. That is not a business meeting.

Q. Who have been the representatives of the North American on the Board of Directors of the Pacific Gas and Electric Company since the death of Mr. Earl?

(Testimony of James B. Black.)

A. Mr. Fogarty, Mr. Doolittle and Mr. Freeman.

Q. Who are the present representatives?

A. Mr. Fogarty and Mr. Freeman.

Q. Mr. Freeman succeeded Mr. Doolittle, did he?

[1061]

A. Yes; at the time of his resignation as Vice-President of the North American Company. I think that was late in 1936.

Q. Since 1930 has the Pacific Gas and Electric Company had any contracts with the North American Company?

A. Never have had, except this contract for the acquisition of stock, for those holdings.

Q. Has the North American Company loaned to the Pacific Gas and Electric Company any money, or has the Pacific Gas and Electric Company borrowed any money from the North American Company? A. No; never.

Q. There has been no financial transaction between them so far as you know, with the single exception of the 1930 transaction?

A. That is correct.

Q. Have there been any changes in the general policies or organization of the Pacific Gas and Electric Company since you became President?

A. No; no substantial changes. Of course, our policies are developed and they are changing all the time. The policies and organization are not static. But there has been nothing of a radical nature in the way of changes.

(Testimony of James B. Black.)

Q. With respect to the membership of the Board of Directors of the company, do you recall the names of the directors who have been elected since you became President? [1062]

A. Yes. I think I can recite them.

Q. What has the usual procedure been in connection with the election of a director to fill a vacancy?

A. With the exception of the representatives of the North American Company, it has been my practice to canvass the field of likely directors. I always try to get someone who has a large stock interest and, at the same time, can contribute, in my opinion, to the company's affairs. As between the two I would rather have someone who didn't have a large stock interest and could make a contribution to the company's welfare, rather than the reverse. But we have been fortunate in being able, since I have been here, to get that combination.

Then I make my recommendation to the Executive Board or to the Board of Directors, or both. The matters are discussed, perhaps some alternative names are suggested, and when it is agreed that the proper person has been determined on I call on that man and ask him if he will serve if he is elected. Then if he agrees the Board takes action.

Q. Since you have been President the following persons have been elected directors: First was Mr. McIntosh on December 18, 1935. Will you tell why he was selected?

(Testimony of James B. Black.)

A. Mr. McIntosh had been very close to the company's affairs through his service on the Executive Committee and the Board in the absences of Mr. Frank B. Anderson, and his institution was one of our six principal depositaries here in [1063] San Francisco, and he is a man of the highest standing, a man of character and ability in the City, and has a substantial interest in the company in the way of holdings. I felt that he would be the most desirable man who was apparently available at the moment.

I canvassed that choice, I remember, particularly. It was made very shortly after I came here. I canvassed the suggestion informally with the members of the Board and I called on Mr. McIntosh after I had discussed it with them.

Q. I take it his appointment met with unanimous approval? A. It did; yes.

Q. Now, how about Mr. Wishon's election? How did that come about?

A. Mr. Wishon was at that time the president of the San Joaquin Light & Power Corporation and was taking an increasingly important position in the Pacific Gas and Electric Company affairs. He and his family were large stockholders in the company. He had a very intimate knowledge of the San Joaquin and Midland operations, and a good knowledge of the operations of the Great Western and Pacific systems. It was my belief that he could contribute to the company's welfare and would be a source of information to the other members on the

(Testimony of James B. Black.)

Board because of that knowledge, and I thought he ought to be on the Board of Directors. So I proposed his name to the Board and that met with unanimous approval. [1064]

Q. Now, Mr. Silas H. Palmer was elected in November 1936. How did his election come about?

A. In substantially the same way that I have described. I called on Mr. Palmer, after I knew his interest, the interest of his family and relatives, in the company's affairs. I had known him for about 20 years and I know he is a man with great experience in construction problems, and was a director, a man of business in the city, and I thought that he would, and I am sure he has made quite a contribution to the company's affairs.

Q. He is now a member of the Executive Committee?

A. He is now a member of the Executive Committee; yes.

Q. Mr. William W. Crocker was elected in October 1937? A. Yes.

Q. How did his election come about?

A. In exactly the same way. In addition, of course, his father and family had holdings in the company, or its predecessor companies going back for many years, very substantial holdings, and Mr. Crocker succeeded to his father's place in the business affairs of the Crocker family, and he was taking an increasingly important part in the general business affairs of the community.

(Testimony of James B. Black.)

Q. Mr. Henry D. Nichols was elected in March 1938? A. Yes.

Q. How did his election come about? [1065]

A. I had never known Mr. Nichols well before I came out here, but his name was suggested several times in the discussions as to a possible director.

Prior to the time of his election I made it my business to get fairly well acquainted with him. Because of his large holdings, and the holdings of his family, and his position in the community, it was very apparent, after we got to know the man, that he would be a very valuable director to us. When the opportunity came why he was unanimously elected by the Board.

Q. Was the question of the selection of these gentlemen by the Board taken up by you with the North American Company? A. It was not.

Q. Did the North American Company, prior to the election of these men, know that they were to be elected?

A. Not to my knowledge. I might qualify that by saying that perhaps at some time in conversation with them, knowing of their acquaintance with Mr. Wishon, I might have said that Emory was going on the Board, but I didn't in any way discuss the desirability of his going on the Board and in any way get their opinion as to whether he should go on the Board. But it is my practice occasionally to talk to Fogarty or, in his absence, perhaps with Mr. Freeman, and it is possible,

(Testimony of James B. Black.)

though I don't recall it, that in those conversations I might have mentioned that Emory was going on the Board. [1066]

Q. But with the possible exception of Mr. Wishon, you are sure that you didn't talk to North American about who was to be elected on Applicant's Board?

A. Absolutely. I don't think that any of the North American Company officers know or have any personal acquaintance with them.

Q. With respect to what might be termed the proxy machinery of the company, who acts as members of the Proxy Committee?

A. For many years the President, the Vice-President and General Manager and the Secretary have acted as proxies, and I carried that custom on at the time I came out here and have continued it.

It has been my practice each year to tell the Executive Committee or the Board of Directors what I am doing with respect to sending out the requests for proxies.

Q. Is it a fact that the same officers, that is to say, the holders of the same offices have acted as proxies for many years in the company?

A. Yes. I think, with relatively few exceptions, from the beginning.

Q. The President, Vice-President and General Manager and the Secretary?

A. And the Treasurer.

(Testimony of James B. Black.)

Q. I believe the record shows it is the Secretary.

A. In recent years—yes, that is correct. In recent [1067] years the Secretary and the Treasurer are the same man.

Q. Mr. Hockenbeamer, during his incumbency it was the Treasurer, too? A. Yes.

Q. And there has been no change in this practice during your administration? A. No.

Q. With respect to vacancies on the Executive Committee you have already testified as to the selection of Mr. Palmer. How did it happen that Mr. Livermore was selected as a member of the Executive Committee?

A. Mr. Livermore had been on the Board for, I think, about 20 years, and his father before him had had a very substantial interest in the company's affairs. Mr. Livermore is an engineer by training and, in addition, he has had a great deal of business experience, and it was my belief that he would be a very valuable man on the Executive Committee.

Under the by-laws it is my privilege to nominate the members of the Executive Committee and I nominated Mr. Livermore.

Q. The directors approved his nomination?

A. They did; unanimously.

Q. Did you take up the question of Mr. Livermore's nomination and election as a member of the Executive Committee with the North American?

A. No. [1068]

(Testimony of James B. Black.)

Q. Some questions were asked some of the witnesses as to whether or not Mr. Palmer's selection was taken up with the North American Company so that they would relinquish whatever rights they might have of having a director to fill the vacancy created by Mr. Earl's death. Did any such conversation take place?

A. No. We just went ahead and filled the vacancy.

Q. By the way, I forgot to ask you, Mrs. Black is a Californian, is she not?

A. She was born in Oakland.

Q. And her family has lived here for many years? A. Yes; from the 1850s.

Q. Do you onw any stock in the North American Company?

A. A small amount, I think 100, 102, or 105, or 110 shares.

Q. 105 or——

A. (interposing) I think it is 102 shares of the common stock.

Q. Do you own any securities in any North American affiliates or subsidiaries?

A. I do not.

Q. Since you became President of the company have there been any changes in the banking connections of the company—I refer to that by the ordinary banks of deposit?

A. Nothing, except that we are making changes from time [1069] to time in the small depositaries

(Testimony of James B. Black.)

in the country. Around the system we have about 260 of those. Occasionally a new one starts which can be useful to us, and occasionally there is a merger between two of them. Except for those changes there have been none.

Q. Has the company borrowed any money from banks within recent years? A. No.

Q. Have there been any changes in the transfer agents or registrars since you became president?

A. No.

Q. With respect to the matters of rate adjustments or rate changes, have any of those matters been taken up by you with the North American Company during your presidency?

A. Never before they have been decided on.

Q. After they have been decided on and have gone into effect knowledge of those changes goes in connection with the reports that are sent on?

A. Yes. Occasionally on an important matter I might call up and tell them, the North American directors, what perhaps might be made public tomorrow in the newspapers in order that they may be forewarned.

Q. But their advice or consent has never been sought on such matters? A. Never. [1070]

Q. With respect to refunding operations of the company, will you state generally what has been done since you have become President?

A. In 1936 we had three operations; One for

(Testimony of James B. Black.)

$90,000,000 in March; one for $30,000,000 in April; and one for $35,000,000 in October. Those were entirely—the money realized from the sale of those securities was used in its entirety for calling underlying bonds and bonds of the first refunding mortgage.

I would like to correct that. They were used—no, my original statement is correct.

Q. State how the head of the syndicate came to be selected?

A. Well, I called Mr. Blyth down to my office—I think it was in January of 1936—and asked him if he was in a position to head up our underwriting; that were were going to do some refunding that year, probably beginning immediately, and I wished to get the underwriting group in shape, and that I had decided that I would like to have his house head the group. As I said, I asked him if he was in a position to do so. He said that he was; that he would be glad to do so.

I then asked him to have his people get in touch with our people and get to work on a registration statement.

I asked him for his ideas on the underwriting group, and the participation of the different firms, which he agreed to [1071] give me, and we started to work.

Q. Had you been spoken to by any of the directors about Blyth & Co. previous to your talk with Mr. Blyth?

(Testimony of James B. Black.)

A. I had by one director. Mr. Chickering—I remember the incident very distinctly. I was lunching at the club and he was on his way out. He stopped at my chair and said that we ought to have Blyth & Co. heading our underwriting business, and he hoped that I would recommend that and see that it was done. He said that he had not been very happy with the situation as it then existed and he thought that Blyth ought to be given an opportunity to see whether they could do the job.

I told him that I wasn't particularly interested in that at the time; that I had too many problems to look after then, and that it was too far ahead to worry about.

Q. What were your reasons for deciding to recommend Blyth & Co. to head the syndicate?

A. They were the same reasons that I gave Mr. Hockenbeamer almost a year before: That Blyth & Co., and its predecessor, Blyth, Witter & Co., had been in the Pacific Gas and Electric business, and in the business of the San Joaquin Light & Power Corporation for a good many years; that they had built up a strong national organization and that they had developed a good distribution which was well recognized in the investment world; that they had been strengthening their New York office, and that in line with the general policy of [1072] many years standing of the Pacific Gas and Electric Company to do all the business that they could possibly do with local people, I thought at that

(Testimony of James B. Black.)

time, in the early part of 1935, and I still thought so in 1936, that they should, that he should give Blyth & Co. the opportunity of demonstrating what I felt they could do in the way of a successful heading of the underwriting group.

Q. When you took the matter up with Blyth & Co. did you state that it was your desire that they add local houses to the underwriting syndicate?

A. I did. I told them that one reason I was choosing them was because of the fact that they were the leading western house and that I felt that wherever there was a western firm that could contribute to the underwriting group that they should be taken in.

He asked me who I had in mind. I told him, and asked him to give me some suggestions and, as a result of it, we added to the original group, which Mr. Hockenbeamer had used in the previous year, six houses in addition to Blyth & Co.

Q. Are Bancamerica Company, Mitchum, Tully & Co., Elworthy & Co., William Cavalier & Co., Brush, Slocumb & Co. and Schwabacher & Co. the six California houses that you refer to?

A. They are.

Q. This recommendation that Blyth & Co. be requested [1073] to head the syndicate was communicated by you to the Executive Committee and the Board of Directors of the company, was it not?

A. One or the other, or perhaps both. I told them what I was going to do and asked if they had any

(Testimony of James B. Black.)

objections, and if they did have I would like to have them to determine what my course should be. Not only had they no objections, but they approved with great enthusiasm what I had proposed.

Q. In 1935 had Mr. Hockenbeamer communicated with you in connection with the proposed financing?

A. Yes. He called me, after he had it well on the way, several times—I wouldn't say he called me several times, but we had several conversations which were initiated by him. He was making inquiry with respect to the standing of the various investment houses. That was due to the fact that with the cessation of underwriting business by banking affiliates, which was required by the Bank Act, I think, of 1933, there were a great many changes in the investment banking world, and he being in San Francisco was anxious to get all the information he could on just where the strength lay both as to capital and as to general background and probable distribution ability.

We had several conversations on those points. I gave him all the information that I could get together on that.

Q. In connection with his request for information at [1074] that time you made the statements with respect to Blyth & Co. that you have testified to?

A. Yes. I remember that particular conversation well. He said he had been pestered by every bank-

(Testimony of James B. Black.)

ing house in the United States to head the business —that perhaps is a little exaggeration—but that he was fed up and annoyed about it and he wanted to get it settled quickly. He did ask me what I thought about it. I told him my first opinion, which I reserved the right to change after reflection, was that he ought to give Blyth & Co. the chance to head it up; that the alignment then made might carry through a good many years if the group was satisfactory.

Q. Was that suggestion, not a suggestion by you, but that response by you to Mr. Hockenbeamer's request the result of your own independent judgment, or was it a result of solicitations made by representatives of Blyth & Co.?

A. It was my own independent judgment.

Q. Has the North American Company, or its directors or officials, either at that time or at any subsequent time, made any requests or suggestions to you with respect to leadership of underwriting syndicates? A. They never have.

Q. Do you recall the circumstances in connection with the $90,000,000 issue in 1936, when Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. were added to the syndicate? [1075]

A. Yes.

Q. Do you know how that came about?

A. Yes. It came about perhaps out of an excess of caution. I know a good many of the other underwriters in the group felt it was. But it was

(Testimony of James B. Black.)

my first underwriting job after coming out here. It was the largest, I think, underwriting that had ever been attempted under the new Act. It was Blyth's first underwriting as a head of the syndicate. I just couldn't run any possible risk of it going wrong. I knew I had adequate distribution in the group, but I wanted to plug up every possible point of danger with such a large underwriting, and I asked Mr. Blyth to give me his suggestions as to some additional houses to be included in that group, and that group alone. I knew at the time that we organized the group and undertook the $90,000,000 operation, that we would in all likelihood proceed with a $30,000,000 operation 30 days later. My thinking in all of my negotiations with Blyth at that time ran to the two operations as really one. I told him at that time that there was no place for anyone, no place for such a large group, in my opinion, in the subsequent operations. He wasn't, I do not believe, particularly enthusiastic at the time about it. I know I had heard some grumblings from other members of the group because they felt that their participation would be unduly reduced by the addition of new members, but I, nevertheless, insisted and I [1076] think before we completed our conversations Mr. Blyth was entirely in accord with me, that some additional strength be included.

Those three houses were included and they were told that they would be included only for that particular operation.

(Testimony of James B. Black.)

Q. Do you recall whether the names of these three houses were submitted to you by Mr. Blyth or not?

A. They came out of the discussions. I don't recall—of course, they were all three prominent houses and both of us had them in our mind when the discussion began as possibilities. I don't remember just whether he boiled the suggestions down to the three, or whether I did. But we were in accord when we got through talking about them.

Q. Was the name of any of these three houses suggested by the North American Company or any of its officers? A. They were not.

Q. So far as you know they never knew they were in the syndicate until after the securities had been issued?

A. Well, I don't know. I may have told them in the conversations that I had with Mr. Fogarty with respect to price and market, told them what the group was, but at no time did I ever ask any advice from them as to whether they should be included or not.

Q. They were included, as a matter of fact, before——

A. (interposing) Yes. The decisions were made long [1077] before that. Of course, the first time that there would be any public knowledge of the makeup of the group would probably come some time during the registration period.

(Testimony of James B. Black.)

Q. How were the North American representatives that now serve on the Board designated?

A. Well, at the time I left New York I called to Mr. Fogarty's attention, a fact that he probably already knew, that my resignation would leave the North American Company with one representative on the Pacific Gas and Electric Company Board and asked him if he would not like to be elected, appointed a member of the Board. He said he would.

With respect to Mr. Freeman, I don't recall just how I was advised by the North American people of Mr. Doolittle's resignation and the suggestion that Mr. Freeman should serve in his stead, but no doubt the suggestion did come from them.

Q. Do you know whether it is the practice each year when the North American sends its proxy to suggest in its letter who it would like to have elected as its representatives?

A. That was done, but it hasn't been done recently. I know I did it a few times when I was in New York. I think in the last couple of years we have just gone ahead and included the then North American nominees in the slate of directors to be voted on by the stockholders without any suggestion.

Q. Do you recall in the latter part of 1936 that the rate of dividend on the common stock was increased? [1078] A. Yes.

Q. Will you state what took place before the

(Testimony of James B. Black.)

Board of Directors in connection with that dividend action?

A. I made the recommendation that the rate be increased. I felt that the company's position was such, and the prospects of earnings were such that it would be a justifiable action.

In 1935 the company earned $2.10, and in 1936 we earned $2.55, and at the time of the declaration of the dividend we knew pretty well what the earnings would be. A good many of our situations that resulted from the depression, such as reductions in wages of employees, and matters of that kind, had been cleared up, and I felt it was perfectly a safe move to make, and the Board agreed.

Q. You had no discussion with respect to that dividend increase with the North American Company, did you? A. No.

Q. You have already been shown Applicant's Exhibits 33 and 45? A. Yes.

Q. Is it a fact that the material in these exhibits is given to the directors, or members of the Executive Committee?

A. The material in them certainly is in such detail as they wish to discuss or take along with them.

Q. Now, with respect to Exhibit 45, do you read from [1079] Exhibit 45, or the same form, to the meeting of the Executive Committee?

A. Yes. I report from this statement at each

(Testimony of James B. Black.)

meeting after it is issued. It is issued monthly. I comment to them on the variations in the number of customers served, the gains or losses in sales of kilowatt hours to commercial classifications for the current month and for the year to date, the gains or losses in revenues of the several classifications of consumers for the month to date, and the changes in the average rates of revenues per kilowatt hour received from those classifications, and I report on the gas sales to the different classifications, both as to revenue and cubic feet sold; then I usually make some comment on the temperature conditions this year as compared with a year ago, which has quite an influence on our gas revenue. And such matters as I do not report on are always reported on by Mr. Downing, which relates to operating matters which may be contained in that report.

Q. Is it fair to say that the contents of those two exhibits, that is in the form shown by those two exhibits, the material that was discussed between yourself and Mr. Hockenbeamer in 1930 as being the type of material that should thereafter be sent to the North American representatives on the Board of Directors and Executive Committee?

A. That is correct. [1080]

Q. And that practice started then has continued up to the present date?

A. That is right. In substantially the same form, certainly the substance.

(Testimony of James B. Black.)

Q. Now, with respect to the annual report, the testimony shows that shortly after the final form of annual report is sent out to the stockholders copies of the printer's proof are circulated among all of the directors, including the North American directors?

A. We have tried to do that, but sometimes under the press of time we haven't been able to do it. But I think, since I have been out here, that once or twice I have been able to get preliminary copies of the report back in the hands of the North American directors on our Board, but never have I received any suggestion from them in time to be considered in the preparation of the report for that year. I try to get those copies in the hands of our local directors, and I think we have been fairly successful in that, before they go to print.

Q. Have you ever received any suggestions or comments from North American directors, or officers, with respect to salary matters of the Pacific Gas and Electric Company? A. Never.

Q. I neglected to ask you, Mr. Black, as to the number of shares of stock of the Pacific Gas and Electric Company [1081] which you own.

A. I own 1000 shares of common and 9 shares of preferred.

Q. Mr. Black, have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas and Electric Company is controlled,

(Testimony of James B. Black.)

directly or indirectly by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company? A. No.

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. I would with every resource at my command.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Freeman or Mr. Fogarty, would also oppose such attempt? A. I am sure they would.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company do you think that it would be able to do so? A. No.

Q. If the North American Company attempted to secure [1082] sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and the San Francisco directors of Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt? A. I am sure they would not.

Q. Why?

A. This company has a rather unique position

(Testimony of James R. Black.)

in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 percent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.

Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the [1083] side of the company in any such fight.

Q. Mr. Black, are you personally acquainted with a number of the large stockholders of the company who reside outside of the State of California?

A. Yes; I know a few of them.

Q. What corporations are you an officer or a director of, other than the Pacific Gas and Electric Company and its subsidiary companies?

(Testimony of James B. Black.)

A. I am a director and member of the Executive Committee of the Southern Pacific Company; I am on the Board of the Equitable Life Assurance Society of the United States; I am a director of the Home Fire and Marine Insurance Company, and of the Del Monte Properties Company.

Mr. Phleger: I suggest this is an appropriate time to recess.

The Examiner: We will take a short recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: We will resume the hearing now.

You had not completed, had you Mr. Phleger?

Mr. Phleger: No. I have a couple of questions.

By Mr. Phleger:

Q. Mr. Black, can you recall what the financial rating of the bonds of the Pacific Gas and Electric Company is?

A. The First Refundings are Al Poor's. [1084]

Q. Now, you have testified——

The Examiner (interposing): Pardon me. Did you say "1A"

The Witness: A1.

The Examiner: Not AA1?

The Witness: It is AA. AAA is the highest rating. We are second.

(Testimony of James B. Black.)

By Mr. Phleger:

Q. You testified at some length respecting the selection of Blyth & Co. to head certain bond syndicates of the company. I take it that there is no commitment with respect to underwriting syndicates by the company?

A. There are no commitments of any kind and never have been with Blyth or anyone else since I have been President of the company. Blyth knows that they were called in to do that first job, and, if they hadn't done it well, we probably wouldn't have done the second job. We certainly wouldn't have done it with them, and they know that they are subject to removal at any time if we feel that they are not doing the proper kind of a job.

Q. Those matters are decided as they come up?

A. That is correct.

Mr. Phleger: That is all.

The Examiner: Cross examine, Miss Calkin.

[1085]

Cross Examination

By Miss Calkin:

Q. Applicant's present interest in the Vallejo Electric Light & Power was acquired prior to the time you became its President? A. Yes.

Q. As President of the Applicant what contacts do you have with the Vallejo Electric Light & Power?

(Testimony of James B. Black.)

A. The only contacts I have had have been with the president, Dr. Casper, in an attempt to acquire the stock that he and his sisters own.

Q. The Applicant is desirous of acquiring all of the stock of the Vallejo Electric Light & Power?

A. If we can get it at the right price, yes.

Q. Mr. Coghlan is one of the representatives of the Applicant on the Board of Vallejo Electric Light & Power. Who is the other director? I have forgotten.

A. Mr. Straub, one of our attorneys.

Q. Is he an attorney in the employ of the Applicant? A. Yes, full time.

Q. As President of the Applicant you do not participate in the formulation or carrying out of the operating policies of the Vallejo Company?

A. I do not.

Q. Does the Applicant render any services, supervisory [1086] or otherwise, to Vallejo?

A. None whatsoever, except they might ask our engineering department for engineering advice. I understand that we do give them some engineering advice occasionally, merely as an accommodation.

Q. Is that billed to the Vallejo Company substantially at cost? A. Oh, I presume so.

Q. Could you describe the extent of the contact between the personnel of the Applicant and that of the Vallejo Company?

A. As far as I know, there is no contact except the contact that Mr. Coghlan and Mr. Straub would

(Testimony of James B. Black.)

have through the attendance of Board meetings and such advice as might be given or might be asked for by Dr. Casper in connection with any construction problems or engineering problems which he might have. Perhaps he might ask for some advice on rate structures. He is making a good many rate adjustments there. I don't know that that is a fact, but it is possible.

Q. Do you know by whom the Great Western Power Company of California or its predecessor company was organized? I don't mean the actual incorporators, but I mean the interests behind.

A. Great Western Power?

Q. Great Western Power of California.

A. Great Western Power of California was the successor [1087] to Great Western Power Company and that, in turn, was successor to Western Power Company, a California corporation. The group that organized that—this is largely hearsay—was Mr. E. T. Earl, Mr. Guy C. Earl and Mr. P. H. Wilson, and a group of eastern people, Mr. Edwin Hawley. I don't know just when these people came in. I don't know if they were original or not, but Mr. Hawley was one of the original group. The group developed to include Mr. Birchard, who was then Treasurer of the General Electric Company, and some of the Bedford family and the Pratt family who were connected with the early Standard Oil operations.

(Testimony of James B. Black.)

Q. Are they easterners?

A. All New York except the Earls.

Q. When was the first predecessor of that company organized? About when?

A. Well, it was in the early 1900s. The construction began in 1905 or '06, and the first power I think was delivered from the Big Bend plant in December of 1908.

Q. Were Mr. Earl and his brother the predominant Californians interested in that company?

A. I should say that his brother perhaps was the predominant Californian. I don't know. This is largely hearsay. It was long before my time.

Q. Well, during most of its corporate history was Great Western Power Company of California or its predecessor [1088] a subsidiary of Western Power Corporation? A. Entirely.

Q. And Western Power Corporation was always a holding company?

A. Yes. It had a predecessor corporation, too; that is, Western Power Company, and Western Power Corporation succeeded it. They were both New York corporations.

Q. But so far as you know those same persons that you have named were dominant in the first companies and their successors?

A. Yes, that is right. The group was, I think, quite cohesive all through, but just when each one came in I never did know. There was another man

(Testimony of James B. Black.)

whom I neglected to mention, and that is John R. Freeman who was an internationally known consulting engineer. He was also in the insurance business and he was quite active in the affairs of Western Power Corporation and was a substantial stockholder up to the time of his death.

Q. And those persons that you have named, generally speaking, were primarily interested in the company up until the time control of it was purchased by the North American people?

A. Yes. I think there were some deaths along there, but generally what I have said is true. Mr. E. T. Earl died. I don't know what happened to his holdings. Mr. Birchard died before 1925. I think the Pratt and the Bedford holdings [1089] were in the hands of members of the family at that time.

Q. In 1925 when the North American people acquired control of the Western Power Corporation it had only three principal subsidiaries, namely, the Great Western Power Company of California, San Joaquin Light & Power Company, and Midland Counties Public Service Corporation. Is that correct? A. That is correct.

Q. And it only recently had acquired control of the latter two?

A. That is correct. There were, of course, some subsidiaries of Great Western Power Company of California in addition to that, but they were not direct subsidiaries of Western Power.

Q. Feather River Power Company?

(Testimony of James B. Black.)

A. Feather River Power Company, California Electric Generating Company, and Napa Valley Electric Company. I guess Feather River Company was not acquired until afterward, but the others had been acquired and the property was in the process of being transferred to Great Western Power Company of California.

Miss Calkins: I have in my possession several balance sheets which have been furnished me by Mr. Freeman of the North American Company which I had intended to introduce when Mr. Freeman was on the stand, but inasmuch as it is not definite whether or not Mr. Freeman will testify in these pro- [1090] ceedings I am wondering if counsel for the Applicant, who has seen copies of these balance sheets, has any objection to my introduction of them into evidence.

Mr. Phleger: No, we will not object to them. We would like the privilege, if later check should show inaccuracies, of correcting them. But subject to that right we have no objection on counsel's statement that they were supplied from the source stated.

Miss Calkins: Yes. I think I showed Mr. Gerdes a copy of a letter that I received from Mr. Freeman when these were sent.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

Miss Calkins: I should like at this time to introduce in evidence as Commission's Exhibit No. 31

(Testimony of James B. Black.)

the balance sheet of the Western Power Corporation as of August 31, 1925. And to introduce an exhibit as Commission's Exhibit No. 32, a consolidated balance sheet of the Western Power Corporation and subsidiary companies as of the same date, August 31, 1925.

The Examiner: Under the circumstances stated they will be received in evidence and marked, respectively, Commission's Exhibits 31 and 32.

(The balance sheets above referred to were marked Commission's Exhibits 31 and 32, respectively, and were received in evidence.)

[1091]

By Miss Calkin:

Q. When and how did the North American Company acquire control of the Western Power Corporation?

A. Control of Western Power Corporation by North American Company took place in the latter part of 1925 and that control was acquired through an exchange of stock, an offer made by North American Company to the stockholders of the Western Power Corporation. That was pursuant to an agreement between Mr. Wilson, I think, for the Western Power Corporation and Mr. Dame for the North American Company.

Q. Do you recall on what basis the stock of the North American Company was exchanged for the stock of the Western Power Corporation?

(Testimony of James B. Black.)

A. I think it was one and a quarter shares of North American Company stock for one share of Western Power common—that is, North American common—and there was an offer made for a limited amount of Western Power Corporation preferred, and I think that was limited to 25,000 shares of North American Company $50 share preferred, which was offered in exchange for one share of $100 Western Power Preferred stock with four-fifths, I think, of a share of North American Company common.

Q. Were you a member of the Board of the Western Power Corporation between 1925 and 1930?

A. I was made a member of the Board of Western Power Corporation in November, I think, of 1926. [1092]

Q. And how long did you serve in that capacity?

A. I served until I resigned in November of 1935.

Q. Were the other members of the Board of that company associated with the North American Company?

A. I think all of them were, yes.

Q. Where were the main offices of the Western Power Corporation between 1925 and 1930?

A. 60 Broadway, New York.

Q. What were the principal activities of the Western Power Corporation during that period?

(Testimony of James B. Black.)

A. Well, it was just a holding company. It just held the stocks of the California subsidiaries which it controlled and advanced those subsidiaries funds for corporate uses.

Q. It carried on its activities, generally speaking, through the representatives of the North American Company?

A. Yes. They were substantially identical.

Miss Calkin: I should like to introduce in evidence as Commission's Exhibit No. 33 the balance sheet of the Western Power Corporation as of December 31, 1929. And as Commission's Exhibit No. 34 the consolidated balance sheet of Western Power Corporation's subsidiary companies as of December 31, 1929. And the balance sheet of the Western Power Corporation as of Febuary 28, 1930 as Commission's Exhibit No. 35.

The Examiner: The three documents just offered and described will be received, respectively, as Commission's [1093] Exhibits 33, 34 and 35.

(The balance sheets above referred to were marked Commission's Exhibits Nos. 33, 34 and 35 and received in evidence.)

Mr. Phleger: Subject to correction.

The Examiner: Subject to the same conditions as the others, namely, corrections if there are found to be any errors.

(Testimony of James B. Black.)

By Miss Calkin:

Q. I believe you testified on direct examination, Mr. Black, that the negotiations which culminated in the 1930 acquisition by the Applicant of the securities of the subsidiaries of Western Power Corporation were initiated by Mr. Hockenbeamer?

A. That's correct.

Q. Would you state that the applicant was more aggressive than was the North American Company in bringing about a consummation of the transaction? A. Yes.

Q. In what respects did you then consider the deal advantageous from the standpoint of the North American Company?

A. It removed the hazards of competition, which I have testified to previously. It rounded out the Pacific Gas group into a large system which could be very economically operated and which, through the elimination of that competition and because of the increase in its size, would have a great deal [1094] better credit than would be enjoyed by either group operating independently. It, through these economies, permitted reductions in rates and improved service through the larger group to the customers, which was a desirable and a sound development. And it gave the North American Company an investment in a situation which to my mind would be second to none from an operating and territorial standpoint to any other situation in the United States.

(Testimony of James B. Black.)

Mr. Black: I hand you what has been marked for purposes of identification Commission's Exhibit No. 36, which purports to be a photostatic copy of a memorandum from Mr. Gruhl to Mr. Dame dated October 23, 1929, and will ask you if you can identify that document.

A. I don't know that I ever saw it. Do you want me to identify the substance?

Miss Calkin: There are similar documents here of this nature which, I might say, are copies of documents which I took from the files of the North American Company. And on that statement I wonder if the Applicant has any objection to their admission.

Mr. Phleger: No. On the statement and assurance of counsel that these are copies of documents taken from the North American Company files, we have no objection to their introduction.

Miss Calkin: I offer in evidence Commission's Exhibit [1095] No. 36.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 36.

(The document above referred to was marked Commission's Exhibit No. 36 and received in evidence.)

By Miss Calkin:

Q. As of October 23, 1929 I believe you testified that Mr. Dame was president of the North American Company?

(Testimony of James B. Black.)

A. Yes, that's correct.

Q. And what was Mr. Gruhl's position?

A. He was Vice-President and General Manager.

Q. Are either of these gentlemen now living?

A. No.

Q. Did Mr. Gruhl later become President of the North American Company? A. He did.

Q. He was Mr. Dame's successor, was he not?

A. Mr. Gruhl became President and Mr. Dame became Chairman of the Board of the Company.

Q. And I take it from this memorandum that you were in California carrying on negotiations as of the date of the memorandum?

A. Yes. That's about the time that I was in California. Yes. This memorandum starts out by saying that "Black advised by telephone today . . ." so I obviously was. [1096]

Miss Calkin: I now offer in evidence as Commission's Exhibits Nos. 37, 38 and 39 these memorandums. The one marked Exhibit No. 37 is dated October 28, 1929, with the typewritten signature "Edwin Gruhl".

The other two memorandums are dated October 28, 1929 and unsigned. These letters are photostatic copies of originals which I found in the files of the North American Company, and I would like to ask this witness if he is acquainted with those memorandums.

(Testimony of James B. Black.)

The Examiner: The exhibits will be marked as Commission's Exhibits 37, 38 and 39, respectively, as described.

(The photostatic copies of letters above referred to were marked Commission's Exhibits 37, 38 and 39 respectively for identification.)

The Witness: Well, I don't know that I saw the one dated October 28. It is another memorandum of a telephone conversation with me evidently when I was in San Francisco.

The Examiner: That is the one marked "37".

The Witness: This is a memorandum of the same date, and I don't know that I ever saw it. I don't recall that I ever did. It was prepared evidently in New York while I was in San Francisco.

The Examiner: Exhibit 38 consists of two pages.

The Witness: This is another memorandum of the same date. I don't recall that I ever saw it, but no doubt I prepared some of the data on which the memorandum was based. [1097]

By Miss Calkin:

Q. You don't know who might have prepared those memorandums?

A. No. I presume that Mr. Gruhl did or it was done under his direction. It looks as though that it was his work. I can only guess at that, though. I don't recall ever having seen it.

Miss Calkin: Does counsel for the Applicant have

(Testimony of James B. Black.)

any objection to admission into evidence of Exhibits 37 to 39, inclusive?

Mr. Phleger: No. With respect to these documents, without admitting their relevancy, we will waive proof that these are copies of documents found in the North American Company's files, on counsel's assurance.

The Examiner: Yes. I already suggested that these latter three be marked as Commission's Exhibits upon the statement of counsel, as I understood he intended to relate it to all of this series of documents which you obtained from the files of the company. That they would be admitted on that basis, and they were admitted. Exhibit 39 consists of four pages.

(The photostatic copies of letters above referred to were marked Commission's Exhibits 37, 38 and 39 respectively and were received in evidence.) [1098]

By Miss Calkin:

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 40, and I will ask you if you can identify that document?

A. Yes. This is a telegram from Mr. Gruhl to me at the Palace Hotel in San Francisco.

Miss Calkin: We offer in evidence Commission's Exhibit No. 40.

(Testimony of James B. Black.)

A. (continuing) I don't remember it, but it no doubt was sent.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 40.

(The telegram above referred to was marked Commission's Exhibit No. 40 and received in evidence.)

By Miss Calkin:

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 41 and ask you if you can identify that document.

A. That's the telegram from me to Mr. Gruhl when I was in San Francisco.

Miss Calkin: We offer in evidence Commission's Exhibit No. 41.

The Examiner: This telegram bearing date October 31, 1929 will be received in evidence and marked Commission's Exhibit No. 41. [1099]

(The telegram referred to was marked Commission's Exhibit No. 41 and received in evidence.)

By Miss Calkin:

Q. Mr. Black, did you follow the advice given in the telegram constituting Commission's Exhibit No. 40? A. I presume I did, yes.

Q. Were the negotiations halted as of that date, the date of that wire?

A. Well, they were suspended, I should say, ap-

(Testimony of James B. Black.)

proximately at that date. They might have continued a few days longer.

Q. And when were they resumed?

A. That was in November of the same year.

Q. Did you return to New York approximately the date of Commission's Exhibits Nos. 40 and 41, namely, around October 30?

A. That is my recollection; about that time.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 42 and I will ask you if you can identify that document?

A. Yes. This is apparently a memorandum prepared by me on February 28, 1930.

Miss Calkin: We offer in evidence Commission's Exhibit No. 42.

The Examiner: This memorandum, consisting of six pages, will be received in evidence and marked Commission's Exhibit [1100] No. 42.

(The memorandum referred to was marked Commission's Exhibit No. 42 and received in evidence.)

By Miss Calkin:

Q. To whom did you submit this memorandum, Mr. Black?

A. Oh, I don't remember. I presume I prepared it for Mr. Gruhl or Mr. Dame, or both perhaps, from my own information. I don't remember.

Q. Were the facts and matters therein set forth

(Testimony of James B. Black.)

true at that time to the best of your knowledge and belief?

A. To the best of my knowledge, yes.

Q. Did the expression of opinion contained therein constitute your best judgment based upon the facts then in your possession?

Mr. Phleger: What expression of opinion.

A. I don't know whether there was any expression of opinion. I think it was merely a factual statement.

The Examiner: Do you have a copy of that, Mr. Phleger?

Mr. Phleger: Yes. I don't see any expression of opinion.

A. (continuing) I notice in the second paragraph there is an expression of opinion as to what the operating savings would be through consolidation of Western Power subsidiaries with Pacific Gas and Electric Company, and that is substantially my opinion. The financial savings was my opinion at that time. [1101]

The Examiner: Do you recall the question?

Miss Calkin: I think the witness has answered it. I mean, he has pointed out places in the memorandum that did contain expressions of opinion.

The Witness: This memorandum is evidently one that I had prepared subsequent to the conversations which we had with Mr. Hockenbeamer in New York, and was either for my information as a summary of the situation as I understood it at that time or

(Testimony of James B. Black.)

perhaps for the information of other officers of the company. I don't recall.

By Miss Calkin:

Q. In the last paragraph on page 4 of that Exhibit No. 42 you stated "After completion of consolidation, we will have three members on the Board and one member on the Executive Committee which is to be increased to six members. If the Board or Executive Committee is further increased our membership will be increased proportionately." Between what persons was the understanding as to North American Company's representation on the Board reached?

A. Mr. Black. I think it would be proper to say that there was no closing of the understanding until the discussions in New York. Now, those discussions were carried on largely in my office and in Mr. Dame's office, but Mr. Dame and Mr. Gruhl sat in during parts of those discussions. Probably one of them was present at all times. And I presume that [1102] the final settlement of all questions, including the question of representation on the Board, could be said to have been reached at that time, though many of them had been substantially settled in previous conversations.

Q. Do you know whether or not such representation had been approved by the Applicant's Board as it was then constituted as of that date?

A. No, I do not. I don't think that the North

(Testimony of James B. Black.)

American Company Board had taken any action as of that date on any phase of it.

Miss Calkin: I mean Applicant's Board.

The Examiner: The question is as to the Applicant's Board.

The Witness: I don't know that its Board ever formally approved it.

By Miss Calkin:

Q. In the same paragraph of Exhibit 42 on page 4 you further stated "Standard Gas & Electric Company members were required to give certain written assurances as to their participance in the Company's affairs and relating to the disposal of their stock, which we will not do". What were the assurances given by Standard Gas & Electric Company that you referred to?

A. Mr. Hockenbeamer informed me that at the time that the Pacific Gas & Electric Company acquired control of the [1103] Western States properties and Pacific Gas, I think, paid for that control 260,000 shares of common stock that the Pacific Gas and Electric Company officers reached a written memorandum agreement with Mr. O'Brien, who was at that time President of the Standard Gas & Electric Company, with respect to the delivery of proxies to the Pacific Gas and Electric Company management for stock held by Standard Gas & Electric Company in connection with the election of directors of Pacific Gas and Electric

(Testimony of James B. Black.)

Company. I think that proxy ran for 7 years. I am not sure of that. That is my recollection of it.

Q. Have you ever seen a copy of that written memorandum?

A. I have looked at it. I haven't got it very clearly in mind.

Q. It is in the files of the Applicant?

A. Yes, yes. I looked at it here a few months ago.

Q. What assurances did they give in reference to the disposal of their stock?

A. There was a provision that if they ever decided to dispose of their stock that they would give the Pacific Gas and Electric Company notice of such desire, and the Pacific Gas and Electric Company, I think substantially, had the option to purchase the stock at whatever price they decided that they would dispose of it at. That is substantially, as it may be in somewhat different form or there may be somewhat different provisions. But I think that covers it. [1104]

Q. Then the Standard Gas & Electric Company assurances were in the form of an irrevocable proxy to the Pacific Gas and Electric Company?

A. No. It was in the form of an agreement to give them a proxy, as I recall it. The agreement was signed by Mr. O'Brien, I believe, or Mr. Creed or Mr. Hockenbeamer. Mr. Creed was then President of the Pacific Gas and Electric Company.

Q. But that agreement is no longer in effect?

(Testimony of James B. Black.)

A. No, no. Mr. Hockenbeamer asked me for a similar agreement, which I treated with some levity, and he said "Well, I will have to cancel the other one". And I guess he did.

Q. Does that agreement set forth the extent to which the Standard Gas & Electric Company would be permitted to participate in Applicant's affairs?

A. I don't recall that it does.

Q. Your only recollection is in regard to the proxy?

A. There may have been some statement with respect to interference in the executive affairs. I think there was, yes, a statement to the effect that Standard Gas & Electric Company abstain from any interference in the management of the Pacific Gas and Electric Company affairs.

Q. You say that Mr. Hockenbeamer requested the North American Company to enter into a similar written arrangement? A. Yes. [1105]

Q. Did you submit that matter to Mr. Dame and Mr. Gruhl?

A. Well, I probably told them about it, but I certainly wouldn't have asked them whether I should have agreed or not.

Q. And why? What are your reasons?

A. Well, my reason: Insofar as my recommendation went, I would never agree that anyone with an investment of $60,000,000 in a property tie their hands against representation on the Board of Directors of that company.

(Testimony of James B. Black.)

Q. What about participation in the affairs of such a company?

A. Well, I have that understanding with Mr. Hockenbeamer that the North American Company officers, insofar as I was able to direct it, would never interfere in any way with the management of the company.

Q. Did that agreement grow out of his request for a written assurance similar to that given by the Standard people?

A. I can't say that. I don't know. Probably the two were discussed at the same time.

Q. Just what assurances did you give Mr. Hockenbeamer relative to the future participation of the North American Company in the Applicant's affairs?

A. Just that: That insofar as I was able to direct the policy, there never would be any interference in the Pacific Gas and Electric Company affairs or management by [1106] any of the officers of North American Company.

Q. To what extent was it then anticipated that the North American Company would participate in Applicant's affairs?

A. Well, they would participate in their affairs only with respect to what they could give, such help that might be requested by Mr. Hockenbeamer or other officers of the company. The North American Company's interest was solely directed towards increasing the value of the company's stock

(Testimony of James B. Black.)

of which they held a substantial interest, and insuring a proper rate of income on that investment which they held. [1107]

Q. Did you discuss this matter with your superiors, Mr. Gruhl and Mr. Dame?

A. Oh, yes. I discussed all phases of the matter with them.

Q. Were the representations made by you to Mr. Hockenbeamer the result of agreements reached between you and Mr. Gruhl and Mr. Dame?

A. Well, I think there was no doubt that we had a meeting of minds on it, but I recall distinctly that at the time that Mr. Hockenbeamer first brought the question up that I gave him the answer there. I don't remember specifically, but I undoubtedly told Mr. Dame and Mr. Gruhl of the conversation, and there never was any difference of opinion that I recall between the three of us.

Q. So they were familiar with the assurances that you had given Mr. Hockenbeamer on that subject?

A. Oh, quite, yes. And, as I say, the matter was undoubtedly discussed with him in New York, at which they were present.

The Examiner: That is upon Mr. Hockenbeamer's visit to New York?

The Witness: Yes. That is in February of 1930.

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit

(Testimony of James B. Black.)

No. 43, which [1108] is a photostatic copy of a memorandum dated March 5, 1930, bearing the typewritten signature of Mr. Gruhl and will ask you if you are able to identify that document?

A. This is a memorandum prepared by Mr. Gruhl. I presume it is a summary of his views of the transaction whereby North American Company through Western Power Corporation acquired 1,825,000 shares of the common stock of the Pacific Gas and Electric Company. I don't know the purpose of it.

The Examiner: Have you ever seen it before, so far as you know?

The Witness: I don't recall it. Quite likely I did.

Miss Calkin: We offer that in evidence for the same reasons that we have advanced heretofore.

Mr. Phleger: No objection on the same understanding.

The Examiner: Subject to the same understanding it will be received in evidence and marked Commission's Exhibit No. 43, the document consisting of 6 pages.

(The 6-page document referred to was marked Commission's Exhibit No. 43 and was received in evidence.)

Miss Calkin: We offer in evidence as Commission's Exhibit No. 44 photostatic copy of a letter bearing the stamped signature of F. L. Dame, dated April 2, 1930, addressed to Mr. Hugo Wurdack. Do

(Testimony of James B. Black.)

you have any objections to its admission into evidence?

Mr. Phleger: On the same understanding. [1109]

The Examiner: The same basis.

By Miss Calkin:

Q. Do you know who Mr. Wurdack was, Mr. Black.

A. That name sounds familiar. Is he in St. Louis?

The Examiner: St. Louis, Missouri. It will be received in evidence, meanwhile, as Commission's Exhibit 44, being a two-page letter.

(The 2-page letter referred to above was marked Commission's Exhibit No. 44, and was received in evidence.)

The Examiner: Do you want to examine it, Mr. Black?

A. (continuing) —I think he was the representative of an estate which owned quite a block of North American Company common stock, but I am not certain of that. The name sounds familiar.

Miss Calkin: I now offer in evidence as Commission's Exhibit No. 45 photostatic copy of a letter dated April 3, 1930, stamped with the signature "F. L. Dame" and directed to Mr. W. B. Joyce. Does counsel for the Applicant have any objection to the admission of that letter into evidence?

Mr. Phleger: No objection on the same basis.

(Testimony of James B. Black.)

The Examiner: On the same basis it will be received as Commission's Exhibit No. 45.

(The photostatic copy of letter was marked Commission's Exhibit No. 45, and was received in evidence.) [1110]

By Miss Calkin:

Q. Who was Mr. Joyce, if you know, Mr. Black?

A. May I see the exhibit, please?

Mr. Joyce was the president or chairman of the Board of the National Surety Company. I think he at this date, April 3, 1930 was on the Board of the San Joaquin Light & Power Corporation and this letter has to do with his resignation from that Board in connection with the acquisition of control of the Western Power subsidiaries by Pacific Gas and Electric Company.

Q. So far as you know, he was not a director of Western Power Corporation?

A. I don't think so.

Miss Calkin: We now offer in evidence as Commission's Exhibit No. 46 a photostatic copy of a letter dated April 7, 1930, bearing the stamped signature of "F. L. Dame" and addressed to Mr. Hockenbeamer.

The Examiner: On the same basis, I presume there is no objection. The letter of April 7, will be received in evidence and marked Commission's Exhibit No. 46.

(The photostatic copy of letter was marked Commission's Exhibit No. 46 and was received in evidence.)

(Testimony of James B. Black.)

By Miss Calkin:

Q. Mr. Black, was it your understanding at the time [1111] the transaction whereby Applicant acquired the securities of the subsidiaries of Western Power Corporation took place that the nature of North American Company's contact with the Applicant would be substantially the same as they then were with the Detroit Edison Company and the North American Light & Power Company?

A. Well, I don't believe they had control of North American Light & Power at that time, and there was no comparison, as I recall, with Detroit, though there might have been. The agreement was just substantially as I have outlined it and had no relation to any other situation that the North American Company had an interest in.

Miss Calkin: We now offer in evidence as Commission's Exhibit No. 47, photostatic copy of a telegram dated June 6, 1930 from Mr. Black to Mr. Guy C. Earl.

And as Commission's Exhibit No. 48, photostatic copy of a telegram dated June 9, 1930 from Mr. Black to Mr. Hockenbeamer.

And as Commission's Exhibit No. 49, photostatic copy of a telegram dated June 11, 1930 from Mr. Black to Mr. Hockenbeamer.

And as Commission's Exhibit No. 50, photostatic copy of a telegram also dated June 11, 1930 from Mr. Hockenbeamer to Mr. Black.

(Testimony of James B. Black.)

And as Commission's Exhibit No. 51, photostatic copy [1112] of a telegram of the same date, namely June 11, 1930, from Mr. Bosley to the North American Company, "Attention Mr. Black".

And as Commission's Exhibit No. 52, photostatic copy of a telegram dated June 11, 1930 from Mr. Hockenbeamer to Mr. Black.

The Examiner: These documents will be received in evidence as Commission's Exhibits with the numbers as indicated.

(The documents above referred to were marked Commission's Exhibits Nos. 47, 48, 49, 50, 51 and 52, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, can you explain the controversy reflected in the telegrams which were exchanged on the 11th day of June, 1930?

A. The controversy relates as to whether Pacific Gas and Electric Company should pay interest on the advances or be responsible for interest on advances made by Western Power Corporation to the California subsidiaries from some date in February to the date of actual transfer of the securities of the Western Power Corporation subsidiaries to Pacific Gas and Electric Company.

Q. Whose views prevailed in that matter?

A. I think the Pacific Gas paid the interest. I have forgotten. In the March, 1930 agreement there was a [1113] provision that the dividends and in-

(Testimony of James B. Black.)

terest would be adjusted from the date of the agreement to the date when the actual transfer was made, because no one knew exactly what that date would be. There was a date specified in the agreement, but it was pretty well understood that we never would be able to complete all of the formalities which would be necessary in order to consummate the agreement by that time and that an extension would be necessary. Now, whether that extension would be 30, 60, 90 days or six months, no one could say. And, as I recall, that controversy referred to in the telegram related solely to the interest on the advances from some date in February or March to the actual delivery date of the securities and cancellation of the advances.

Q. Mr. Black, in your opinion, was there arm's-length bargaining between the Applicant and the North American Company preliminary to the execution of the March 29, 1930 contract?

A. I should say there was; very definitely.

Q. Between the period in 1930 to 1935 or to the date you became president of the Applicant were you a director of any of the affiliates or subsidiaries of the North American Company?

A. Well, the subsidiaries of which I was a director [1114] were Western Power Corporation and North American Utilities Securities Company, I think. I have forgotten the exact name.

Q. But you were an employee of only the North American Company?

(Testimony of James B. Black.)

A. Technically my salary came from Western Power Corporation. It did in the early period of my employment in New York. Perhaps it came from North American Company in the latter period, I don't know. I don't recall technically, but practically there was no difference.

Q. And you resigned your directorship in the North American Utilities Company about the time you became president of the Applicant?

A. The North American Utilities Securities Company on the same date as I resigned from Western Power Corporation and from North American Company.

Q. What changes, if any, occurred in the directorate of the subsidiaries of the Western Power Corporation after the exchange of securities?

A. You mean after Pacific Gas and Electric Company acquired control?

Q. That's right.

A. Well, as I recall, all of the directors of the subsidiaries were either directors or officers of Pacific Gas and Electric Company or employees of Pacific Gas and [1115] Electric Company.

Q. Did the North American Company have any representation on the Boards of the three companies acquired by the Applicant after 1930?

A. No.

Q. Who were the operating heads of the Great Western Power Company of California, the San Joaquin Light & Power Corporation and Midland

(Testimony of James B. Black.)

Counties Public Service Corporation after June, 1930?

A. Mr. Wishon was president of the San Joaquin and Midland Companies and he was vice-president and assistant general manager of the Pacific Gas and Electric and, I believe, of the Great Western Power Company in California. Mr. P. M. Downing was vice-president and general manager of Pacific Gas and Electric Company and, I think, Great Western Power Company. He was vice-president, I believe, of the San Joaquin and Midland Companies. Mr. Hockenbeamer was president of the Pacific Gas and Electric Company and the chairman of the Board of the San Joaquin Company. Mr. A. G. Wishon was the vice-chairman of the Board of the San Joaquin Company. I think I am correct.

Q. Did Mr. Wishon and Mr. Downing in their respective capacities report to any representatives of the North American Company?

A. They did not. [1116]

Q. Did you have any business contacts with Mr. Downing or Mr. Wishon in connection with the operation of those then subsidiaries of the Applicant?

A. I did not.

Q. Could you describe briefly the activities of the Western Power Corporation from approximately July 1, 1930 until the date of its dissolution?

A. It gave its stockholders the right to sub-

(Testimony of James B. Black.)

scribe to Pacific Gas and Electric stock I think at $20 a share which it held. I don't recall any other corporate changes. It carried on no activities as a holding company. It was merely used to hold the 1,825,000 shares of Pacific Gas and Electric Company common stock until this subscription to the stockholders was made, and it then held I believe some cash and the balance of the unsubscribed Pacific Gas and Electric Company stock until its dissolution. At the time of its dissolution, which I think took place in 1936, it distributed the Pacific Gas and Electric Company stock and its cash which it held to its common stockholders after paying off its preferred stock pro-rata.

Q. Did the Western Power Corporation have any securities outstanding in the hands of the public as of the date of its dissolution?

A. I think it had only preferred stock. I am not sure of that. That is my recollection. In addition to its [1117] common stock, of course.

The Examiner: Was the common stock in the hands of the public?

The Witness: There was a small minority interest; quite small minority interest. Substantially all of it was owned by the North American Company.

By Miss Calkin:

Q. And this preferred stock was redeemed or called at the time of its dissolution?

(Testimony of James B. Black.)

A. I think it was paid off at par at the time of dissolution.

Miss Calkin: I wish to introduce in evidence as Commission's Exhibit 53 a balance sheet of the Pacific Gas and Electric Company and subsidiary companies as of June 30, 1930.

And as Commission's Exhibit No. 54, a balance sheet of the Western Power Corporation as of March 31, 1930.

And as Commission's Exhibit No. 55, a consolidated balance sheet of the Western Power Corporation and subsidiary companies as of March 31, 1930.

And as Commission's Exhibit No. 56, the balance sheet of the Western Power Corporation as of July 31, 1930.

As Commission's Exhibit No. 57, a chart showing the directors of the Western Power Corporation from January 1, 1930 to the date of its dissolution on May 2, 1936. [1118]

And as Commission's Exhibit No. 58 a balance sheet of the Western Power Corporation as of May 21, 1936.

Is there any objection to the introduction of those documents?

Mr. Phleger: No objection, subject to correction, if necessary.

The Examiner: All right. The documents which have been described and offered will be, subject to

(Testimony of James B. Black.)

that condition, received in evidence and marked as Commission's Exhibits 53 to 58 respectively.

(The documents referred to above were marked Commission's Exhibits Nos. 53, 54, 55, 56, 57 and 58, and were received in evidence.)

By Miss Calkin:

Q. Who is David R. Hawkins, Mr. Black, if you know?

A. He is a partner of Sullivan and Cromwell, a law firm in New York.

Q. And who was John Foster Dulles?

A. He was also a partner of Sullivan and Cromwell.

Q. C. R. Gantner?

A. Mr. Gantner was and is a lawyer in New York City and was a member of the firm which was counsel for Western Power Corporation at the time that North American Company obtained control.

Q. And who is Mr. Robert Sealy? [1119]

A. Robert Sealy is the treasurer of the North American Company.

Q. And Mr. Wilson, of whom you have spoken, is Mr. H. P. Wilson?

A. Mr. H. P. Wilson, yes. He was president of Western Power Corporation for many years.

Miss Calkin: This is a convenient stopping place for me.

The Examiner: By previous agreement we will re-

(Testimony of James B. Black.)

cess until Monday morning instead of until tomorrow morning at 10:00 o'clock.

(Whereupon at 4:30 the hearing in the above-entitled matter was adjourned to Monday, November 25, 1940, at 10:00 o'clock a.m.) [1120]

Proceedings

The Examiner: We will resume the hearing when you are ready.

Whereupon——

JAMES B. BLACK

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination

(Resumed)

By Miss Calkin:

Q. Mr. Black, do you know why——

Off the record.

The Examiner: Off the record.

(Remarks off the record.)

The Examiner: On the record.

Mr. Phleger: Mr. Black, you were asked on direct examination what the rating was of the bonds of the Pacific Gas and Electric Company. You replied "The first refundings are A-1 Poor's."

Then you testified it was AA.

(Testimony of James B. Black.)

The Witness: Well, I should have said it was AA Moody's. A-1—by that I mean A plus 1 star, or AA. But the rating should have been Moody's instead of Poor's.

By Miss Calkin: [1122]

Q. Mr. Black, do you know why North American has had only two representatives on Applicant's Board since the death of Mr. Earl, rather than 3, as contemplated when it acquired Applicant's stock?

A. Well, they haven't suggested anyone else. I don't know the reasons for it except as might have come out of our experience late in 1935 in conversations which I had with Mr. Hockenbeamer, after Mr. Earl's death, when we discussed a possible addition to the Board as a North American Company nominee and neither one of us had any ideas that were worth very much and we just dropped the matter and it has remained in that position ever since.

Q. Did you ever request Mr. Fogarty to have North American release its right to one director so that some local man might be selected?

A. No; no.

Q. The vacancy left by Mr. Earl's death was filled by a local man on your own initiative?

A. Yes.

Q. Do you know whether there is any correlation between your election to the presidency of the Ap-

(Testimony of James B. Black.)

plicant and North American's determination that its representation by two, rather than three members, was sufficient?

A. I am sure there was none.

Q. Did you have any discussions with Mr. Fogarty [1123] regarding the reduction of North American's representatives from three to two members? A. No.

Q. After talking over the matter with Mr. Hockenbeamer in the early fall or late summer of 1935 upon your return to New York you never discussed the matter with Mr. Fogarty?

A. I may have, but if I did I told him that I had no recommendations to make with respect to filling that vacancy, and that Mr. Hockenbeamer had none, that either of us felt had any merit and we just agreed to let the matter ride.

Q. Did Mr. Fogarty, Mr. Williams, or anyone else associated with the North American Company ever tell you in substance that your presidency made North American's representation on the Board less necessary than it was during Mr. Hockenbeamer's lifetime?

A. Not to my recollection, I never heard of it.

Q. If Mr. Hockenbeamer were now president of the Applicant, in your opinion, would North American have three representatives on the Applicant's Board?

A. I don't know. If were not able to make any

(Testimony of James B. Black.)

more progress in finding a suitable representative than we did in 1935 they would not.

Q. I believe you testified on direct examination that the membership of the Proxy Committee had been determined by you during your presidency in accordance with custom established [1124] during previous presidencies? A. That is correct.

Q. And you submit the names of those persons to the Executive Committee and the Board?

A. Yes. I tell them about the proxy statement and the makeup of the notice which goes to the stockholders.

Q. Who prepares the notice of the stockholders' meetings and the proxy statements?

A. That is prepared by Mr. Foote and Mr. Bosley and submitted to me, and I advise the Committee or the Board, or both, of the contents.

Q. Who prepares the minutes of the Board meeting at which the Proxy Committee is selected?

A. I don't believe that the Board actually selects the Proxy Committee. I don't know that there is any resolution passed.

Q. Does the Board approve the notice to stockholders of the annual meeting?

A. It has to; yes, it approves the notice of solicitation of proxies; yes.

Q. Who prepares the minutes of that meeting?

A. Mr. Foote. He prepares the minutes for all meetings.

(Testimony of James B. Black.)

Q. Who mails the proxy notice to the stockholders?

A. That is under Mr. Foote's direction. [1125]

Q. To whom are those proxies returned?

A. I believe they are returned to Mr. Foote.

Q. They are returned to the office of the company located here?

A. Oh, yes; at 245 Market Street.

Q. How does the North American Company make known to you what individuals it desires elected as its representatives?

A. Mr. Fogarty's election resulted from the suggestion which I made to him before I left New York, calling to his attention that the North American Company had only one representative on the Board as a result of my resignation and Mr. Earl's death five months previous thereto. I don't believe there was any discussion about the re-election of Mr. Doolittle, who was then the sole representative of the North American Company early in 1936. When Mr. Doolittle resigned late in 1936 I was told by Mr. Fogarty that they would like to have Mr. Freeman succeed him, and he was appointed by the Board to succeed Mr. Doolittle. I don't believe I have had any word from the North American Company nominees with respect to their re-election in subsequent years. I have just taken it as a matter of course that, in the absence of any advice, they would like to have the nominees that were then serving re-elected.

(Testimony of James B. Black.)

Q. And you include Mr. Freeman's and Mr. Fogarty's name in the proxy statement which is mailed to the North [1126] American Company which is also mailed to other stockholders?

A. To all stockholders; yes.

Q. And you have included those names without any communication from the North American Company prior thereto?

A. I don't recall any communications in the last couple of years. I think, in the absence of any communication, I would just go ahead and make up the slate including those men.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 59 and 60; No. 59 being a letter dated March 24, 1932 from yourself to Mr. Hockenbeamer, and No. 60 being a letter dated March 28, 1932, from Mr. Hockenbeamer to yourself, and will ask you if those are correct copies of the documents they purport to be copies of?

A. Yes; they seem to be a copy of the letter which I sent to Mr. Hockenbeamer and his reply.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 59 and 60.

The Examiner: They will be received in evidence as Commission's Exhibits 59 and 60 respectively.

(The photostatic copies of letters referred to were marked Commission's Exhibits Nos. 59 and 60, and were received in evidence.)

(Testimony of James B. Black.)

By Miss Calkin: [1127]

Q. Do these letters constitute the only communications between North American and the Applicant relative to North American's representation on Applicant's Board for 1932?

A. As far as I know, yes.

Q. You had no other communications with Mr. Hockenbeamer? A. I don't recall any.

Q. I hand you what has been marked for purposes of identification as Commission's Exhibit No. 61, the same purporting to be a photostatic copy of a letter dated January 28, 1933, from Mr. Dame to Mr. Hockenbeamer, and will ask you if you can identify that letter. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 61.

The Examiner: Without objection, it will be received in evidence and marked Commission's Exhibit No. 61.

(The photostatic copy of the letter referred above was marked Commission's Exhibit No. 61 and was received in evidence.)

By Miss Calkin:

Q. Was the request made in this letter complied with, Mr. Black? A. Yes.

Q. I hand you what purports to be a photostatic copy of [1128] a letter dated March 17, 1933, from yourself to Mr. Hockenbeamer, marked as Commission's Exhibit No. 62 for purposes of identification,

(Testimony of James B. Black.)

and I will ask you if that is a true copy of the document that it purports to represent? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 62.

The Examiner: The letter marked Commission's Exhibit No. 62 for identification will be received in evidence as Commission's Exhibit No. 62.

(The photostatic copy of letter referred to above was marked Commission's Exhibit No. 62 and was received in evidence.)

By Miss Calkin:

Q. Was Exhibit No. 62 your only communication with Mr. Hockenbeamer, or any of Applicant's representatives, regarding the subject matter thereof?

A. During that year?

Q. Yes. A. As far as I recall, yes.

Q. I now hand you what has been marked for purposes of identification as Commission's Exhibits Nos. 63 to 66, inclusive; Commission's Exhibit 63 purporting to be copy of a telegram dated January 17, 1934 from yourself to Mr. Hockenbeamer; Commission's Exhibit No. 64 purporting to be a copy [1129] of a letter dated January 17, 1934 from Mr. Foote to Mr. Doolittle; Commission's Exhibit No. 65 purporting to be a copy of a telegram dated January 18, 1934 from Mr. Hockenbeamer to yourself, and Commission's Exhibit No. 66 purporting to be a copy of a telegram dated January 19, 1934

(Testimony of James B. Black.)

from yourself to Mr. Hockenbeamer, and I will ask you if you can identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 63 to 66, inclusive.

The Examiner: The documents will be received in evidence in the order described as Commission's Exhibits Nos. 63 to 66 inclusive.

(The photostatic copies of the documents referred to were marked Commission's Exhibits Nos. 63 to 66 inclusive, and were received in evidence.)

By Miss Calkin:

Q. By Mr. Black, so far as you know, do Exhibits 63 to 66 inclusive constitute all of the communications between the Applicant and the North American regarding the selection of Mr. Doolittle to fill the vacancy caused by Mr. Dame's death?

A. As far as I know, yes.

Q. I now hand you what has been marked for purposes of identification Commision's Exhibit No. 67, which purports to be a copy of a letter dated March 31, 1934 from yourself [1130] to Mr. Hockenbeamer, and what has been marked for purpurposes of identification Commission's Exhibit No. 68, which purports to be a copy of a letter dated April 2, 1935 from yourself to Mr. Hockenbeamer, what has been marked for purposes of identification as Commission's Exhibit No. 69, which purports to be a copy of a letter from Mr. Hockenbeamer to

(Testimony of James B. Black.)

yourself dated April 6, 1935, and will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 67 to 69 inclusive.

The Examiner: They will be received in evidence as Commission's Exhibits Nos. 67 to 69 inclusive.

(The photostatic copies of documents referred to above were marked Commission's Exhibits Nos. 67 to 69 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, do Commission's Exhibits Nos. 67 to 69 inclusive, constitute all of the communications between the Applicant and the North American Company prior to the 1935 annual stockholders' meeting? A. As far as I recall, yes.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 70, which purports to be a copy of a letter from Mr. Hockenbeamer to Mr. Fogarty [1131] dated July 10, 1935, and what has been marked for purposes of identification as Commission's Exhibit No. 71, which purports to be a copy of a letter from yourself to Mr. Hockenbeamer dated April 2, 1935, and I will ask you if you can identify these documents?

A. Yes. I don't know that I ever saw the original of this letter to Mr. Fogarty, but I assume it is in the files.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 70 and 71.

The Examiner: If there is no objection these two documents will be received in evidence as Commission's Exhibits Nos. 70 and 71 respectively.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits Nos. 70 and 71 respectively, and were received in evidence.)

By Miss Calkin:

Q. In the examination of the files of the North American Company, Mr. Black, I failed to find any letters since you have been president of the Applicant similar to the exhibits which have been introduced relating to advice from the North American Company as to who it wanted as representatives on the Applicant's Board. Is that explained by your previous testimony to the effect that you have not been advised during your presidency as to who they wanted, but you assumed [1132] that the same men would continue in office?

A. That is with respect to Mr. Doolittle, yes. Except with respect to him I was certainly advised —that is not an accurate statement.

With respect to Mr. Freeman's election to succeed Mr. Doolittle I was certainly advised because I would not have known what to have recommended otherwise; but other than that there have been no successions.

(Testimony of James B. Black.)

Q. Then there has been no correspondence since you have been president similar to the correspondence between the North American people and Mr. Hockenbeamer regarding a selection of the persons?

A. I don't recall any—there may have been. I don't recall how I was advised about Mr. Doolittle, whether it was by telephone or by letter. There may have been a letter.

Mr. Phleger: It is a fact, isn't it, that the proxy statement which is the invitation to send in a proxy in the last two years has contained the names of the North American representatives?

The Witness: Yes.

Mr. Phleger: And when they have sent it back, they have sent back instructions for the selection of their own representatives?

The Witness: Yes.

Mr. Phleger: Isn't that true? [1133]

The Witness: That is so; yes.

By Miss Calkin:

Q. The evidence, I believe, shows that neither Mr. Fogarty or Mr. Freeman have ever attended a meeting of the Applicant's Board of Directors. Have either of these men ever said anything to you concerning their absence from the Directors' meetings?

A. No, I don't recall any specific reference to it.

(Testimony of James B. Black.)

Q. Do you know why these directors do not deem it necessary to attend Board meetings in order to look after North American's investment in the Applicant?

A. I presume they feel they are getting sufficient information from reports that we send them and advice that I give them from time to time on the important affairs of the company to know what is going on. I don't know what is in their minds. I have never discussed the subject with them.

Q. The attendance of the North American representatives has been less frequent since Mr. Earl's death than it was prior to that time, has it not, Mr. Black?

A. Not the attendance of the representatives, the New York representatives, I don't think there has been much change in that; but, of course, after Mr. Earl's death there was no local nominee of the North American on the Board. There has been none.

Q. But it is a correct statement to say that the [1134] attendance of the North American representatives at Applicant's Board meetings has been less frequent since Mr. Earl's death than it was prior thereto?

A. That is technically correct, yes.

Q. Have you ever conferred with Mr. Fogarty or Mr. Freeman regarding matters pertaining to the Applicant before the submission of such matters to the Applicant's' Board? A. Never.

(Testimony of James B. Black.)

Q. Can you compare the difference between the matters which you submit to the Executive Committee and which you submit to the Board?

A. Well, the Executive Committee considers a great deal more detail than the Board and meets more frequently and, of course, we get over a great deal more ground. There are certain functions that we ask the Board to assume, such as declaration of dividends, and the increase of debt, and the replacement of lost certificates, and applications to regulatory bodies, and important matters of that kind. But with those exceptions, the important matters that are brought before the Board and Executive Committee are quite similar. The Executive Committee passes on a great many other matters, such as salary changes of $300 and over, contracts, important contracts, right of way agreements, disposal of property; and we report in perhaps more detail on operating matters to the Executive Committee than we do to the Board. [1135]

Q. Do any of the officers of the company, other than yourself, submit matters originally to the Executive Committee?

A. Oh, yes; Mr. Downing, Mr. Coghlan and Mr. Wishon all make reports and submit matters originally before the Executive Committee and before the Board.

Q. To what extent did Mr. Earl keep you, or other representatives of North American, advised as to the activities of the Executive Committee?

(Testimony of James B. Black.)

A. Mr. Earl sent on the reports generally, which are now being sent on, to New York and in addition he would advise us of any important matters that were being considered or had been considered by the Board at the meeting. That is about all.

Q. You have heard the testimony of several directors to the effect that it was customary for Mr. Earl to take rather voluminous notes at the meetings of the Executive Committee and the Board? A. Yes.

Q. After such meetings did you or, to your knowledge, any representative of the North American Company receive from Mr. Earl a synopsis of what had occurred at the meetings?

A. He would write a letter of transmittal directed to the president of the North American Company in which he would outline important matters that had been discussed at the meeting and had been decided. In that way he gave the [1136] North American Company officers, their nominees on the Board of Pacific Gas and Electric Company, a week's earlier advice than they would have received had they waited for the minutes for the following meeting to come along.

Q. Those minutes were not sent to the North American Company during Mr. Earl's lifetime?

A. Yes. I think he enclosed copies of the minutes, of course, he would enclose a copy of the minutes of the previous meeting, and he would anticipate by one week——

Q. (interposing) In other words, he wrote this

(Testimony of James B. Black.)

letter prior to the time he was furnished with a copy of the minutes of the Executive Committee?

A. Yes. He would jot down the important matters. I don't know as he would cover everything that would be covered in the minutes, and he might have covered some things not covered in the minutes.

Q. Who, if anyone, performs the same functions with respect to keeping North American advised as Mr. Earl did during his lifetime?

A. No one performs those functions.

Q. So that now North American receives only the copies of the minutes of the Executive Committee and of the Board?

A. Yes; and in addition the reports, of course, which have been referred to.

Q. But as to the activities of the Board and the [1137] Executive Committee meetings they receive only the minutes? A. That is correct; yes.

Q. Has anyone associated with the North American Company ever advised you in substance that as long as you were president of the Applicant the North American Company did not deem its representation on the Executive Committee necessary?

A. No.

Q. What discussions, if any, have you had with any North American representatives as to the non-desirability or non-necessity of representation by the North American on Applicant's Executive Committee?

(Testimony of James B. Black.)

A. I haven't had any that I recall. I am quite sure I haven't had any.

Q. Were any of the officers, present officers of the Applicant, other than yourself and Mr. Wishon, ever associated with the North American Company, the Western Power Corporation, or any of the subsidiaries of either of those companies?

A. No.

Q. Your direct testimony may have covered this, but what was your position with the Western Power Corporation, or any of its subsidiaries, at the time North American acquired its interest in the Western Power Corporation?

A. I was Vice-President and General Manager of the Great Western Power Company of California, and a director, I [1138] believe, of the San Joaquin and Midland Companies, and was a director and Vice-President of the subsidiaries of the Great Western Power Company of California.

Q. But you were neither an officer or director of the Western Power Corporation?

A. I was not.

Q. Who suggested your transfer from the Great Western Power Company of California to the North American Company in 1927?

A. The first I heard of it was through Mr. H. P. Wilson, who had been president of the Western Power Corporation, and later Mr. Dame spoke to me about it.

(Testimony of James B. Black.)

Q. Was Mr. Wilson at that time a stockholder of the North American Company? A. Yes.

Q. What portion of your time did you devote to matters pertaining to the business of the Western Power Corporation, or its subsidiaries, from the period 1927 to 1930?

A. A very substantial portion. I don't recall any allocation ever being made, but it was my primary duty to assist the Western Power subsidiaries in their operations.

Q. What change took place in your duties after 1930?

A. There was no great change. As long as I was a member of the Board representing the North American Company on the Pacific Gas Board I was the principal point of contact [1139] with the affairs of Pacific Gas and Electric Company and, in addition, I had other special assignments from time to time on North American Company affairs other than their interests in the Pacific Gas and Electric Company.

Q. Did you spend approximately as much of your time as an employee of the North American Company on business pertaining to the Applicant as you did on business pertaining to the subsidiaries of the Western Power Corporation from the period 1927 to 1930? A. Very much less.

Q. And you had no contacts with the Western Power Corporation after your resignation from its Board in the fall of 1935?

(Testimony of James B. Black.)

A. None whatsoever except the routine contacts with the stockholders.

Q. I believe in your direct testimony you testified that Mr. Fogarty first acquainted you with the desire of some members of Applicant's Board that you become president of the Applicant?

A. That is right.

Q. Had you discussed a possible successor to Mr. Hockenbeamer with anyone prior to Mr. Hockenbeamer's death? A. Never.

Q. Had you ever in any manner prior to Mr. Hockenbeamer's death indicated to anyone connected with North American or [1140] the Applicant that upon Mr. Hockenbeamer's retirement or death you would be a candidate for his position?

A. I have no such recollection of any conversation.

Q. Did you talk to Mr. Williams concerning your acceptance of the offer of the Board of the Applicant to take the presidency of that company?

A. I did not.

Q. Did you at any time prior to the time you left New York for California, in November of 1935, have any discussions with Mr. Williams regarding your presidency of the Applicant?

A. No. I went in to say goodbye to him a day or so before I left. That was the only contact I had with him, as I recall, in that period.

Q. With what representatives of the North American Company organization did you confer

(Testimony of James B. Black.)

regarding your acceptance of the offer by the Applicant's Board?

A. Mr. Fogarty is the only one that I recall having any discussion with about it. I might have said something to Mr. Doolittle, but I don't recall it. He was on the Board at the time.

Q. How many telephone conversations did you have with Mr. Miller regarding the presidency of the company prior to your coming here?

A. Just the two. I think they both occurred the same [1141] day.

Q. When was the question of the salary which you would receive from the Applicant discussed?

A. In San Francisco after I came out here.

Q. There was no mention made of salary during the telephone conversations with Mr. Miller?

A. Mr. Miller said we would discuss that when I got to San Francisco, which was entirely agreeable to me.

Q. Was your initial salary as president of the Applicant an increase over your salary with the North American? A. It was; yes.

Q. Did you feel fairly certain that there would be such an increase when you agreed to accept the position? A. Yes.

Q. Did you talk to any of the local directors, other than Mr. Miller, prior to your acceptance of the offer made by Mr. Miller? A. I did not.

Q. Was there any written communication between you and/or the North American and any of

(Testimony of James B. Black.)

the local directors regarding the offer and acceptance of the presidency of the Applicant?

A. Not to my knowledge.

Q. Have you now testified, Mr. Black, to everything that you know concerning your selection as the president of [1142] the Applicant?

A. I have; yes.

Q. What, if anything, was said by you, Mr. Williams, Mr. Fogarty, or Mr. Freeman, prior to your leaving New York City to accept the presidency of the Applicant, regarding your future contacts with North American on Applicant's problems?

A. I don't recall any conversations.

Q. Did you make any representation to them that you would advise North American representatives concerning Applicant's problems to a greater or lesser extent than Mr. Hockenbeamer had done?

A. No.

Q. Was there any understanding between you and any representatives of the North American Company which imposed any obligation upon you with respect to advising North American on Applicant's matters, or conferring with its representaties on its policies? A. None whatsoever.

Q. Did you at that time formulate in your own mind what your attitude toward North American as president of the Applicant, would be?

A. No. I don't think it ever occurred to me.

Q. Did you have any discussions with any representatives of the North American Company as to

(Testimony of James B. Black.)

what your attitude toward [1143] the North American would be?

A. No. The relations between the two companies, may I amplify, were such a routine nature that naturally the subject would not come up.

Q. Have you at any time, in any manner indicated to North American representatives that during your presidency of the Applicant you would also act as its representative on Applicant's Board?

A. Never.

Q. Has the fact that North American is the largest stockholder of the Applicant ever influenced your decision or recommendation on Applicant's problems and, if so, to what extent?

A. None whatsoever; and it has never influenced me in any way.

Q. To what extent has your former association with the North American Company and its subsidiaries influenced your conduct as president of the Applicant? A. None at all.

Q. Do you feel that as president of the Applicant you have made no decisions which would have been different if you had never been associated with North American or its subsidiaries?

A. I have never considered the North American in any decision that I have made since I have been president of the [1144] Applicant.

Q. Have you ever refused to follow any recommendations, if any were made, by the North American on Applicant's problems?

(Testimony of James B. Black.)

A. None have ever been made.

Q. In your opinion does not your prior association with the North American Company tend to influence your opinion in the event there is any divergence of views between certain members of the Applicant's Board and yourself on problems pertaining to the Applicant?

A. They do not.

Q. How often do you have telephonic communications with the representatives of the North American Company?

A. As often as there is any important matters decided which I think they might have an interest in, and that their directors ought to know about in order to intelligently answer any inquiries that might be made. As to the number, that would vary with the number of important matters. I don't suppose as an average it would be more than five, six, eight times a year.

Q. Mr. Black, the staff of the Commission has checked the records of the Telephone Company, the Applicant, and the North American Company, and have obtained the following information: That in 1937 there were two calls from Applicant's number in San Francisco to the North American [1145] Company; in 1938 there were six calls, and in 1939 there were three calls; and that for said years the calls from the North American Company to the Applicant were two, three, and two for the respec-

(Testimony of James B. Black.)

tive years. Would you say that that information was substantially correct?

A. That checks pretty closely with my answer, I think.

Q. Do any representatives of the Applicant go to New York to confer with North American representatives on any problems pertaining to the Applicant?

A. No; no representatives of the Pacific Gas and Electric Company go East to confer with North American representatives.

Mr. Phleger: Will you read the question?

(The question referred to was read by the reporter as above recorded.)

By Miss Calkin:

Q. Mr. Black, there have been on the stand certain employees and officers of the company who have testified as to the extent of their communication with the representatives of the North American Company. To your knowledge are there any other employees of the Applicant who have not been on the stand who have had any communications with the North American Company or have conferred with them in any manner?

A. Not to my knowledge. [1146]

Q. Would any communications which might be made by representatives of the Applicant to the North American Company in a written form, in the normal course of procedure, go over your desk?

(Testimony of James B. Black.)

A. They would unless they were of a routine nature. Mr. Foote's communications, for instance, might not go over my desk, and Mr. Beckett's would not. I would pay no attention to those communications.

Q. But if North American made an inquiry, for example, of Mr. Vincent regarding matters pertaining to his duties would Mr. Vincent's reply reach your desk before it was sent to the North American Company?

A. I would certainly expect it to; yes.

Q. Do any stockholders of the Applicant, other than the North American Company, receive reports similar to those sent to the North American Company?

A. They are not sent to the North American Company stockholders; they are sent to the directors who are officers of the North American Company. The North American Company, as a stockholder, would be treated exactly the same as any other stockholder.

Q. If other stockholders of the Applicant requested specifically the information which you now furnish the directors of the North American Company, would their request be complied with? [1147]

A. I doubt it in its entirety. We would supply them with all the information that they needed as stockholders, but I don't believe we would feel it was necessary to supply them all the information in detail that we supply our directors. We most cer-

(Testimony of James B. Black.)

tainly want to keep our stockholders informed, and we make every effort to do so, but there is a limit to the amount of detail, I think as a matter of precedent, that we should start furnishing to stockholders.

Q. During the time you were an employee of the North American Company, Mr. Black, and received the reports from the Applicant, what use did you make of such reports?

A. Well, I used them to keep in touch with the Pacific Gas and Electric Company's affairs, and I would ask the staff of the North American Company occasionally to make a special analysis of certain phases of certain parts of the reports and they were distributed after that to the different staff departments of the North American Company.

Q. To what extent did you make suggestions to Mr. Hockenbeamer, or any other representatives of the Applicant, concerning problems which presented themselves on your examination of such reports?

A. I don't recall having made any suggestions to him. I would make inquiries from time to time about certain matters which were not clear to me.

Q. Do you frequently or at any time receive comments [1148] from the North American Company on reports which have been furnished during your presidency and, if so, what is generally the nature of such comments?

A. I only recall one comment that had been made by either Mr. Fogarty or Mr. Freeman in re-

(Testimony of James B. Black.)

cent years. That was comment from Mr. Freeman on our cash position. He asked if it wasn't getting too low and I told him I didn't think it was.

Mr. Beckett receives comments and requests for additional information from time to time from Mr. Freeman. Some of those Mr. Beckett shows me and others he answers and I don't see them at all.

Q. Did Mr. Freeman, on the occasion you mention, suggest that your cash position be increased?

A. No. He asked, as I recall, if it wasn't getting pretty low for a company our size, and I told him I didn't think so. I think that was brought about by his lack of knowledge of our cash problems. We have a low point in our cash position around the end of November and the first of December, and from then on until June we build up cash. We lose a little in June and then we build up until the following year. I think he picked up some statement which had been presented to the Executive Committee, or the Board, or both, setting forth our cash position, and it was brought to his attention during that low period. [1149]

Q. As to the explanation which you furnished Mr. Freeman did you receive any other communication from him in regard to the matter?

A. No. I don't know as I explained that to him. I guess—I shouldn't guess. I don't remember just what I did tell him, except that I didn't think that the cash position was unduly low.

(Testimony of James B. Black.)

Q. In what respects, if any, do the reports now furnished by the Applicant to the North American directors differ from the reports furnished during Mr. Hockenbeamer's presidency?

A. They are substantially the same. I would say in substance they are almost exactly the same. They may be changed in form from time to time.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 72, which purports to be a copy of a letter from Mr. Hockenbeamer to yourself dated September 22, 1930, and what has been marked for purposes of identification Commission's Exhibit No. 73, which purports to be a copy of a letter dated September 30, 1930, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 74, which purports to be a copy of a letter dated October 31, 1930 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as [1150] Commission's Exhibit No. 75, which purports to be a copy of a letter dated November 5, 1930 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 76, which purports to be a copy of a letter dated February 6, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 77, which purports to be a copy of a letter dated February 16, 1931 from Mr. Hock-

(Testimony of James B. Black.)

enbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 78, which purports to be a copy of a letter dated February 18, 1931 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 79, which purports to be a copy of a letter dated February 21, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's No. 80, which purports to be a copy of a letter from Mr. Hockenbeamer to yourself dated May 21, 1931, and what has been marked for purposes of identification as Commission's Exhibit No. 81, which purports to be a copy of a letter dated May 17, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 82, which purports to be a copy of a letter dated June 16, 1931 from Mr. Hockenbeamer to yourself, [1151] and what has been marked for purposes of identification as Commission's Exhibit No. 83, which purports to be a copy of a letter dated June 18, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 84, which purports to be a copy of a letter dated November 11, 1931 from yourself to Mr. Beckett, and I will ask you if you can identify Commission's Exhibits Nos. 72 to 84 inclusive?

A. Yes.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 72 to 84 inclusive.

The Examiner: In the absence of objection, these documents will be received in evidence and marked Commission's Exhibits Nos. 72 to 84 inclusive as indicated.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits Nos. 72 to 84 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, was the request made in Commission's Exhibit No. 84 complied with?

A. I presume it was.

Q. I now hand you, Mr. Black, what has been marked for purposes of identification Commission's Exhibit No. 85 which purports to be a copy of the letter dated February 5, 1932 to yourself, and will ask you if you can identify that? [1152]

A. Yes.

Q. Who is the "J." whose initial appears on that letter?

A. I think it is Mr. Hockenbeamer's secretary. Her maiden name began with a "J". She is married now. I think it quite likely, as that is just a routine letter of transmittal, it is quite possible that Mr. Hockenbeamer said, "Send this to Mr. Black" and she wrote the letter and perhaps signed it.

Q. I now hand you what has been marked for

(Testimony of James B. Black.)

purposes of identification Commission's Exhibit No. 86, which purports to be a copy of a letter dated February 15, 1932 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 87, which purports to be a copy of a letter dated March 21, 1932 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 88, which purports to be a copy of a letter dated May 27, 1932, from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 89, which purports to be a copy of a letter dated May 31, 1932, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 90, which purports to be a copy of a letter dated August 16, 1934 from Mr. Hockenbeamer [1153] to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 91, which purports to be a copy of a letter dated November 12, 1934, from "E.J.B." to yourself—E. J. B., I believe are the initials of Mr. Beckett? A. That is correct; yes.

Q. (continuing) —and what has been marked for purposes of identification Commission's Exhibit No. 92, which purports to be a copy of a letter dated November 16, 1934 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No.

(Testimony of James B. Black.)

93, which purports to be a copy of a letter dated November 19, 1934 with the initial "J." addressed to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 94, which purports to be a copy of a letter dated November 20, 1934, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No. 95, which purports to be a copy of a letter dated December 4, 1934 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 96, which purports to be a copy of a letter dated December 10, 1934, from yourself to Mr. Hockenbeamer, and I will ask if you can identify Commission's Exhibits Nos. 84 to 96 inclusive?

[1154]

A. Yes.

Miss Calkin: I offer in evidence Commission's Exhibits Nos. 84 to 96 inclusive.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 84 to 96 inclusive as indicated.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits 84 to 96 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Referring to Commission's Exhibit No. 96, which is a letter dated December 10, 1934 from

(Testimony of James B. Black.)

yourself to Mr. Hockenbeamer, can you tell me what was the extent of the contacts between Mr. Hockenbeamer and Mr. Fogarty as of the date of this letter?

A. As far as I know they would be only by letter.

Q. I am referring specifically to the last paragraph of this letter?

A. I don't know specifically what that refers to. I don't know what that would refer to except perhaps Mr. Hockenbeamer was interested in the legislation at Washington which was being considered, I think, about that time, and was finally enacted in 1935.

Q. Was Mr. Fogarty quite active during that period in connection with the Public Utility Holding Act? [1155]

A. He was in touch with it. I wouldn't say he was active. I know he was in Washington and testified, I think, at some of the hearings before the Senate and House Committees.

Q. You are referring to the then proposed bill which later became the Public Utility Holding Company Act?

A. Yes. I think that is the only thing I can think of that might have been going on at that time which Mr. Hockenbeamer might have been interested in, and which Mr. Fogarty might have had more information on than I had.

(Testimony of James B. Black.)

Q. It would appear from the correspondence introduced, and from the correspondence files examined, that Mr. Hockenbeamer commented upon reports sent by the Applicant to the North American Company to a greater extent than you have done. Do you think that is a fair conclusion?

A. Oh, yes; quite so. He is a much more faithful correspondent than I am.

Q. So you would say that the North American Company received more comments upon the business of the Applicant during Mr. Hockenbeamer's lifetime than it has received since then? A. Yes.

Miss Calkin: I wonder if we could have a recess at this time?

The Examiner: Yes. We will take the morning recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [1156]

By Miss Calkin:

Q. Mr. Black, I believe there has been introduced in evidence typical copies of all reports regularly sent by the Applicant to the North American Company. Will you please state generally the nature of all reports of an informal character made irregularly by the Applicant to the North American Company, if any?

A. I don't recall any reports which are made irregularly to the North American Company, but we sent them copies of court decisions or Railroad

(Testimony of James B. Black.)

Commission decisions, sometimes briefs which might be filed on important litigation. I recall particularly sending on a brief which was filed in connection with this gas rate litigation, which involved about $6,000,000 to the company. And we will send them on clippings from editorials or newspaper accounts of events that they might have an interest in. That is the easiest and simplest way to keep them informed rather than to try to write letters about these various things.

Mr. Gerdes: Will you please read that question, Mr. Reporter?

(The question referred to was read by the reporter as above recorded.)

A. (continuing) Those reports—I assume when you mention the "North American Company" that you refer to the directors of Pacific Gas and Electric Company who are officers [1157] of the North American Company.

The Examiner: Or directly, I presume. She said "if any" in the question. I suppose it might include either the members of the North American Company who are directors of the company or anyone else, if you do send any reports to anyone other than those directors.

The Witness: Well, we don't send any reports to the North American Company. They are sent to the directors.

(Testimony of James B. Black.)

By Miss Calkin:

Q. Are all your communications with the North American Company with Mr. Fogarty or Mr. Freeman, who are directors?

A. Well, they might be. They might designate other people to make inquiries or to indicate, perhaps, that reports be sent to other members of the North American Company organization, but I have always taken that to mean that the directors themselves didn't care to be bothered by having the reports sent directly to them and they would designate someone who was familiar with the substance of the report to receive it.

Q. These other matters which you have just testified were furnished the North American Company people were sent voluntarily or were they requested by the North American Company?

A. You refer to decisions?

Q. Yes. A. Those are sent voluntarily.

[1158]

Q. Who determines whether or not they should be sent? A. Well, I do.

Q. Would you say that the North American Company had been kept better advised on Applicant's affairs since you became president than it was prior thereto?

A. No, I think less.

Q. And what is the reason for such?

A. Well, I think it is the natural thing that once a situation is established or a relationship is

(Testimony of James B. Black.)

established and a routine set up for the supply of information that this extra or special information, both the number of requests and the amount volunteered, becomes less and less as time goes along. I think that is generally what has happened. Of course, I have been extremely busy since I have been here; and, furthermore, when I was in New York I felt a personal responsibility because I had a good deal to do with getting the North American Company into a very large investment out here and it was my desire to keep up to date on what was going on here in the greatest of detail in order that I might intelligibly talk to the other officers of the North American Company about affairs here.

Q. Would you say that there is now no one in the North American Company organization which follows the affairs of the Applicant as closely as you did while you were in the employ of the North American Company? [1159]

A. I think that is correct.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 97, which purports to be a copy of a letter dated October 1, 1930 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 98, which purports to be a copy of a letter dated October 4, 1930 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 99, which pur-

(Testimony of James B. Black.)

ports to be a copy of a letter dated October 16, 1930 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification as Commission's Exhibit No. 100, which purports to be a copy of a letter dated November 12, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 101, which purports to be a copy of a letter dated November 16, 1931 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification Commission's Exhibit No. 102, which purports to be a copy of a letter dated November 20, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 103, which purports to be a copy of a letter dated December 2, 1931 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification Commission's Exhibit No. 104, which purports to be a copy of a letter dated January [1160] 22, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No.105, which purports to be a copy of a telegram dated January 28, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 106, which purports to be a copy of a letter dated August 12, 1935 from yourself to Mr. Foote; and what has been marked for purposes of identification Commission's Exhibit

(Testimony of James B. Black.)

No. 107, which purports to be a copy of a telegram dated July 7, 1938 from yourself to Mr. Fogarty; and will ask you if you can identify those documents. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 97 to 107, inclusive.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 97 to 107, inclusive, there being no objection.

(The documents above referred to were marked Commission's Exhibits Nos. 97 to 107, inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, will you refer to Commission's Exhibit No. 71? What was the "gas rate matter" referred to in the last paragraph of this letter?

A. That evidently refers to the Master's report on the litigation between the Pacific Gas and Electric Company and [1161] the Railroad Commission with respect to gas rates, and the Master's report of the District Court was favorable to the company.

Q. Did you receive a copy of the Master's report referred to in the paragraph and, if so, what did you do upon the receipt of this report as regards advising the Applicant as to future action on its part concerning the rate case?

A. I received the report and filed it, and I didn't attempt to advise anyone out here as to what they should do.

(Testimony of James B. Black.)

Q. Did you have any further correspondence with Mr. Hockenbeamer regarding the gas rate matter?

A. That was litigated over a period of several years. I don't know whether I did or not. If I did, it had nothing to do with the direction of their policy.

Q. At that time were you of the opinion that a contest of that matter was advisable?

A. I don't believe I had any opinion on it. I didn't know enough about it to have one. The matter was decided out here and I didn't feel very strongly one way or the other about it.

Q. You weren't as active in determining the policy of the company in connection with that matter as some of the local directors that have testified concerning it?

A. I was not active at all.

Q. That is the same gas rate case that has been referred [1162] to in testimony of other persons?

A. I presume so, because there has only been one in 27 or 28 years by regulation of the Commission.

Q. I hand you what has been marked for purposes of identification as Commission's Exhibit No. 108, which purports to be a copy of a letter dated June 27, 1935 from yourself to Mr. Hockenbeamer. Can you identify that document? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit 108.

(Testimony of James B. Black.)

The Examiner: It will be received in evidence and marked Commission's Exhibit 108.

(The copy of letter referred to was marked Commission's Exhibit No. 108 and received in evidence.)

By Miss Calkin:

Q. Referring to Commission's Exhibit 108, Mr. Black, were the documents referred to in the first paragraph of this letter sent to you by Mr. Earl during his lifetime?

A. No. They were sent to the president of the North American Company by Mr. Earl.

Q. Was the request made by you in this letter to Mr. Hockenbeamer complied with? A. Yes.

Q. Did Mr. Hockenbeamer keep you advised on "important developments in California" in compliance with the request [1163] made by you in the second paragraph of this letter?

A. Yes. I don't know that I did with all of them.

Q. Could you describe generally the nature of the matters Mr. Hockenbeamer kept you advised on from the date of this letter to his death?

A. Well, I can't tell you the exact matters, but generally they would follow the same pattern that had been followed in previous years. If we had important litigation, such as this gas rate litigation, he would no doubt advise from time to time on his progress; rate matters with the Railroad

(Testimony of James B. Black.)

Commission; other rate matters; he would comment on earnings from time to time and on the prospect for development of large new pieces of business for the company here in California. I think that's about all.

Q. Did you talk to Mr. Earl frequently on the telephone from 1930 until the time of his death?

A. No.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 109, which purports to be a copy of a letter dated August 5, 1935 from yourself to Mr. Hockenbeamer, and will ask you if you can identify that document. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 109. [1164]

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 109.

(The copy of letter referred to was marked Commission's Exhibit No. 109 and received in evidence.)

By Miss Calkin:

Q. Mr. Black, did the Applicant at any time during 1935 have a representative in Washington in connection with the then contemplated Public Utility Holding Company Act of 1935?

A. Not to my knowledge.

Q. Was the North American Company purporting to represent the interests of the Applicant in connection with the proposed Act during this period?

(Testimony of James B. Black.)

A. It was not.

Q. Mr. Black, as you know, representatives of the Commission have examined the files presumably containing all the correspondence between the Applicant and any of its representatives in the North American Company and any of its representatives from 1930 to the date of said examinations, and I believe it is a fair statement that those files do not contain letters between yourself and the North American Company representatives which are as numerous or of the same nature as those which were exchanged between yourself and Mr. Hockenbeamer when the latter was president of the Applicant. Do you have any explanation to make as to why this situation appears to be true, if you agree that it is true? [1165]

A. Well, they weren't written.

Q. And why do you not feel it incumbent upon you to keep the North American Company as closely advised as Mr. Hockenbeamer did?

A. I think I do keep them as closely advised on important matters. Mr. Hockenbeamer used to write me a great many details which I don't believe are necessary for the adequate information of the North American Company representatives as to our affairs. Now I try to keep them advised on every important matter that has anything to do with the fortunes of our business out here, and I do it by telephone calls and I do it by letters occasionally and by the sending of reports regularly, and if there is

(Testimony of James B. Black.)

something unusual coming along which might be covered by a brief or a decision or a newspaper story I send that on. But I don't take the trouble to write a good deal of the detail and attempt to analyze a good deal of the detail which is sent to them.

Q. Is that partially because there is no one in the North American Company office at the present time that is as familiar with the western properties as you were during the time you were there?

A. Well, I don't know that. I think that they feel that they are getting all of the information they need to keep adequately informed, or I would hear from them just as I would hear from any other director if he didn't feel that he [1166] was getting the information that would be necessary for him to discharge his obligation as a director.

Q. Well, the advice which you give North American Company, do you at the same time request their suggestions or recommendations in respect to the information furnished them? A. I do not.

Q. Do you furnish it for the purpose of receiving from them any recommendations, if they might wish to make such?

A. I furnish it for the purpose of keeping them advised, and if they at any time ever cared to make any recommendations or suggestions I would be very glad to have them. But I don't solicit them.

Q. What generally is the nature of the communications that you have had from representatives of

(Testimony of James B. Black.)

the North American Company regarding information contained in the reports which have been regularly or irregularly furnished to them?

A. I have had very little. Those communications have settled in Mr. Beckett's hands and he has had inquiries from time to time from Mr. Freeman. I don't think they are very frequent. I don't see them. Ordinarily they ask questions about matters that have to do with the details of the reports which are sent out.

Q. Could you describe generally the nature of the comments made by the North American Company people on the reports sent by the Applicant to them? [1167]

A. Well, they have made no comments that I recall to me. It is just purely a routine transaction, a routine matter as far as I am concerned.

Q. Would you say that they never make recommendations relating to a change in policy by the Applicant when they receive these reports?

A. They never have since I have been president of the company.

Q. Have you furnished North American Company advice on all matters which it has requested advice on? A. Yes.

Q. In the event North American Company should make recommendations regarding some major problem concerning the Applicant what consideration would you give such recommendation?

(Testimony of James B. Black.)

A. I would give them very thorough consideration and I would have to weigh it, of course, on my judgment as to their knowledge of the situation that they were recommending on. If it is a matter that involved the recommendation on a subject which I felt that they were well informed on, I would, of course, give it more consideration than if it referred to some matter which was purely local in character and which they couldn't possibly have a background which would give any great weight to the recommendation.

Q. If the North American people should strongly urge that the Applicant follow a certain course of procedure and [1168] you did not agree with the plan outlined by them, would you submit your views together with those of North American Company to your Board?

A. I would not. I don't believe that it is my function to try to segregate the different views of different groups of directors, if there are. If any director has a view on a matter he is entitled to come to the meeting and present it.

Q. In other words, you would feel that the North American Company viewpoint should be presented by their directors?

A. Exactly, and it would not come up otherwise. By "North American", again I want to make it clear that I look to those men as directors and not to the company in our relations with them.

Q. Mr. Black, do you feel free in your present

(Testimony of James B. Black.)

position to treat any suggestion or recommendation made by North American Company or its directors on your Board in exactly the same manner as you would treat a similar recommendation or suggestion if it were made by any other stockholder?

A. Exactly, giving due weight, of course, to my judgment as to their knowledge of the particular situation that they might be recommending on.

Q. Does the fact that you were formerly associated with the North American Company not tend to influence your determination as to whether or not such recommendations, if made, should be put into effect? [1169] A. None whatsoever.

Q. You do not believe that the fact that the North American Company recommended a particular course would influence you in arriving at your decision as to what your recommendation on the matter to the Board would be?

A. If their recommendation was correct it would, but it wouldn't otherwise. I would treat their recommendations solely on the basis of their value as I determined them, and if they appeared and stated their position in a meeting of the Board I am sure that the other directors would accept their recommendation or reject it purely on its merits.

Q. Would you say that at no time since you have been president of the Applicant has the North American Company or its representatives on your Board recommended a certain course of procedure

(Testimony of James B. Black.)

for the Applicant to follow? A. They have not.

Q. Do you feel that in view of your past association with the North American Company that you could decide a matter which involved a conflict of interest between the Applicant and the North American Company with as much impartiality as if you had not had that association?

A. I feel very strongly that I could.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 110, which purports to be a copy of a letter dated July 6, 1937 from [1170] Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 111, which purports to be a copy of a letter dated July 14, 1937 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibt No. 112, which purports to be a copy of a letter dated July 21, 1937 from Mr. Freeman to yourself; and will ask you if you can identify those documents? A. I can, yes.

Q. Do these letters—that is, Commission's Exhibits Nos. 110 to 112, inclusive—represent all the correspondence had between you and Mr. Freeman regarding the inquiries made by him in the letter dated July 6, 1937, which is Commission's Exhibit 110? A. Yes, so far as I recall.

Q. If any other stockholder had made a similar inquiry would you have answered him in substantially the same manner? A. Yes.

(Testimony of James B. Black.)

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 113, which purports to be a copy of a letter dated December 13, 1937, from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 114, which purports to be a copy of a letter dated December 21, 1937 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 115, [1171] which purports to be a copy of a letter dated December 27, 1937 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 116, which purports to be a copy of a telegram dated May 13, 1936 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 117, which purports to be a copy of a telegram dated May 13, 1938 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 118, which purports to be a copy of a letter dated February 15, 1939 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 119, which purports to be a copy of a letter dated February 20, 1939 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 120, which purports to be a copy of a letter dated August 14, 1939 from Mr. Fogarty to your-

(Testimony of James B. Black.)

self; and I will ask you if you can identify those documents. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 113 to 120, inclusive.

The Examiner: I am not sure that the record shows that 110, 111 and 112 are in evidence, but so that the record will be clear I will have the record show that those have been received in evidence and marked Commission's Exhibits 110, [1172] 111 and 112, respectively.

(The copies of letters referred to were marked Commission's Exhibits Nos. 110, 111 and 112 respectively and were received in evidence.)

The Examiner: In connection with the offer of 113 to 120, inclusive, in the absence of objection they likewise will be received in evidence and marked Commission's Exhibits 113 to 120, as indicated.

(The copies of letters referred to were marked Commission's Exhibits Nos. 113 to 120, inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, would you say that the correspondence just introduced as Commission's Exhibits 113 to 120, inclusive, is typical of the kind of correspondence which has been exchanged between yourself and Mr. Freeman since the date of your presidency?

(Testimony of James B. Black.)

A. I think it's about all the correspondence that has been exchanged. I don't recall anything else. In fact, I——

Q. (interposing) What in general has been the subject matter of the discussions had between you and Mr. Freeman on the occasions of your visits to New York since you have been president of the Applicant?

A. I have been in New York twice: once this year, once in '38. I don't recall any discussions with him in '38. This year I perhaps spent a half an hour in his office. We talked [1173] just generally about the company's affairs. I don't recall the detail of it.

Q. Is Mr. Freeman generally known as an operating or financial man in the utility field?

A. No. Mr. Freeman is an accountant; that is, accountant's training. He is known as a financial man also.

Q. When you conversed with Mr. Freeman during the summer of this year did he make any recommendations in connection with problems relating to the Applicant? A. No.

Q. Would you say that in none of the discussions that you have had with any representatives of the North American Company since you have been president has your opinion in connection with any matter pertaining to the Applicant been neither influenced nor changed as a result of those discussions? A. I can say that very definitely.

(Testimony of James B. Black.)

Q. To what extent, if any, have your discussions with Mr. Freeman affected the financial policies of the Applicant? A. None whatsoever.

Q. What about its accounting policies?

A. No effect whatsoever.

Q. To what extent have you sought the advice of the North American Company representatives on financial or operating problems confronting you as president of the Applicant? [1174]

A. The only time I have sought any advice was during the refunding operations of 1936, and several times I talked to Mr. Fogarty about the strength of the bond market, what he thought the general course would be and about the prices that he thought our bonds might stand. May I correct that? There was one additional incident that arose out of our sale in January or February of 1938 of $15,000,000 of bonds to the group of insurance companies and one bank—a private sale—and I made some inquiry from him as to how much discount he thought we would have to make in price from market to those purchasers in order to interest them. With those exceptions I have made no inquiries with respect to policy during the five years that I have been president.

Q. Do you recall the occasion for the telephone calls that you had with Mr. Fogarty or Mr. Freeman or some of them?

A. Not specifically. I call them up if there is something important that I think they ought to

(Testimony of James B. Black.)

know about; or if I think it is my duty to inform them of, I call them. There is no regular time to call.

Q. Do you recall the last time you talked to either of those gentlemen over the telephone?

A. I think I talked to Fogarty in July of this year to tell him about this San Francisco negotiation for the lease of our distribution properties to the City of San Francisco. That was the first lease. I don't believe I have [1175] talked to him since.

Q. Did you give him information or did you seek his advice as to a particular course of action on the part of the Applicant?

A. Oh, entirely information. I don't think he has any knowledge whatsoever of this situation except in its most general terms. I told him at that time that we were making progress or had come to a decision, I am not sure which. But at the time I called him I was quite sure we would come to a decision—conclusion, rather—with the City with respect to a form of lease. And we did subsequently come to such a conclusion. That was the first of three conclusions that we have come to with them.

Q. Have you talked to him about the subsequent conclusions? A. No.

Q. Was there some matter that arose at that particular time that made a telephone call necessary?

A. I should think likely that that was the reason that I called him. I don't remember specifically. But

(Testimony of James B. Black.)

that was at the time I know when we were active in the negotiations for the first agreement.

Q. At that time did he give you any suggestions in reference to what course you should pursue?

A. None whatsoever. [1176]

Q. To what extent, Mr. Black, are you familiar with the relationships of the North American Company and its subsidiaries?

A. Well, not at all now. I am not in touch at all.

Q. You were familiar with the contacts of the North American Company and its subsidiaries prior to the time that you ceased being in the employ of the North American Company, were you not?

A. I was quite familiar with respect to the California properties. I didn't follow the others in great detail. I knew generally their relationship.

Q. During the period you were vice-president of the North American Company did you have occasion to become acquainted with the type and form of supervision exercised by that company over its subsidiaries?

A. Yes. I knew in general the forms that it took.

Q. Have you ever sent a copy of Applicant's budgets to the North American Company?

A. No.

Q. They have never received such budgets either prior to the time they were submitted to the Board for its approval or subsequent thereto?

(Testimony of James B. Black.)

A. No. We don't submit the budget as a whole to the Board for approval. Our budgetary figures are made up largely for the guidance of the officers and the Board is told gener- [1177] ally of the probable requirements during the year. Then, as each specific item is made ready for approval, it is brought before the Executive Committee or the Board—usually the Executive Committee—and specific approval is given to the item.

Q. But an annual budget, cash, operating and production budget, is prepared by the organization?

A. We prepare it for our own information, but that does not come before the Board for approval and is not sent to the North American Company members of the Board.

Q. But the various expenditures incorporated in the budget are brought before the weekly meetings of the Executive Committee as they arise?

A. That is correct. And after they are passed upon they are sent in the form of the report in which they are brought before the Committee to the directors of the North American Company representatives.

Q. Are they also submitted to the directors of the Applicant who are not members of the Executive Committee?

A. Not unless they come up during the Board meeting. Ordinarily they are disposed of in the Executive Committee.

Q. Do you know whether a copy of the budgets

(Testimony of James B. Black.)

of the subsidiaries of the North American Company are regularly furnished to the North American Company?

A. They used to be and they kept a running cash fore- [1178] cast for six months ahead in great detail of the subsidiary requirements.

Q. During the time you were there was it customary for the North American Company employees to examine a budget before it was put into effect by the subsidiaries and suggest changes in the budgets?

A. They knew in great detail what was going on with respect to construction budgets. That is, I will say I did with respect to the California properties. Occasionally there might have been some suggestion as to the necessity of some expenditure, particularly as it might relate to the construction of a generating plant.

Q. Is the material furnished by the Applicant to the North American Company of such a nature that its accounting department could determine whether Applicant's expenditures were made for the items included in the budget and when they were made for items not so included?

A. Well, we supply the Executive Committee with the report of the various construction items and they are specifically approved. Then in a further report, which is submitted to the Executive Committee, the various over-runs and under-runs

(Testimony of James B. Black.)

are specifically approved or cancelled, and those items are set forth there in the form that they are originally approved in. Now, perhaps a director could follow those through and at least get a general idea as to the disposition [1179] of them. But there is no report made from the standpoint of how they are entered on the books or the method of accounting. That is purely a construction budget report.

Q. And North American Company does not receive the advice that you speak of until after the action has been taken by the Executive Committee?

A. Never.

Q. Have you ever sought or received the approval of the North American Company before making any expenditures not included in the budgets? A. Never.

Q. Does the Applicant have a system of requisitions which must be filled out and approved before any expenditures or requirements are made?

A. Well, they are all set forth in the budget itself and that must be—I don't quite understand what you mean by "requisitions".

Q. Well, I think requisition forms are, to some extent at least, rather common in utility companies. That is, that a person immediately supervising a particular piece of construction or improvement will requisition the material necessary for the job and that requisition must be approved by some superior of his in the organization.

(Testimony of James B. Black.)

A. Oh, yes. That's all carried on in the regular routine of the divisions. The original authorization comes in [1180] the form of what we call a "G. M." That is a request of the General Manager for the approval of the expenditure, and once that approval is obtained then all sorts of requisitions and forms must be made out and approved by the various people in charge.

Q. Who approves these "G. M.s"?

A. The Executive Committee.

Q. For any amount, regardless of the smallness of the sum?

A. Well, the Division Managers have authority to approve emergency items which may come up, but they are always then put in formal shape and specifically approved later.

Q. So that, generally speaking, the Executive Committee approves all "G. M.s"?

A. Oh, yes. And they are informed and eventually approve the items which have been approved by the Division Managers; the emergency items, the small items.

Q. Does North American Company have anything to do with the approval of such "G. M.s"?

A. Nothing whatsoever.

Q. And are not advised as to such approval except in connection with the reports which have been already introduced in evidence?

A. That's correct.

Q. Does North American Company in any man-

(Testimony of James B. Black.)

ner exercise [1181] any supervision over the preparation of your budget or the expenditure of items included therein or not included therein?

A. Nothing at all.

Q. Since you have been president of the Applicant have you ever conferred with any representative of the North American Company concerning the advisability of a major construction job?

A. I never have.

Q. Would you submit to your Board the advisability of expending a substantial sum of money for major construction project without prior thereto having conferred with the North American Company representatives and received their comments upon the advisability of such project?

A. I would and have. We are doing it constantly. The last one that I recall was the construction of a "G. M." approval for the construction of a new hydro plant for our 1933 program.

Q. Approximately how much money did that involve?

A. 1943 program. I am ten years behind. It involved about three and three-quarter million dollars, and it is the first of several that will be approved in the next few months involving fifteen or twenty million dollars.

Q. Has North American Company been advised of those proposed construction jobs?

A. They have not. They have no knowledge of them [1182] whatsoever as far as I know.

(Testimony of James B. Black.)

Q. No reference is made to those in the reports that have been sent to North American Company?

A. Not in those reports which have been sent. They will be set forth in the "G. M." report when it is approved.

Q. That is, as the expenditure is made?

A. No, as the expenditure is authorized.

Q. And you have had no communication to or from the North American Company in regard to the projects that you just spoke of?

A. None whatsoever.

Q. Has the Board or Executive Committee been advised of such projects?

A. Not in detail. They know that the program is ahead of us and must be approved, and we have discussed generally the alternatives with them.

Q. Those are informal discussions which have not been reflected in the minutes?

A. They have not been reflected in the minutes and there has been no formal action taken on them, but we expect to take formal action on them before the end of the year.

Q. Will those construction projects be commenced before the North American Company is advised in reference thereto?

A. Some of them.

Q. On occasions when you do see Mr. Fogarty or Mr. Freeman [1183] do you discuss with them major construction jobs which are either in progress or contemplated?

(Testimony of James B. Black.)

A. I might tell them what is going on. I wouldn't discuss with them any of the problems that surround them.

Q. If the contemplated construction necessitated the raising of new money by the Applicant would you advise the North American Company?

A. Not until we had decided on how we were going to do it.

Q. If North American Company advised against such construction and the new financing incident thereto, how would such advice influence your determination as to whether or not the matter should be submitted to the Board?

A. The matter would have been submitted to the Board before the action was taken, and if the action had been taken we would go ahead with it.

Q. To what extent did Mr. Hockenbeamer confer with the North American representatives concerning construction projects.

A. He didn't confer at all. He would advise me from time to time what he was doing, but there was no conference with respect to any project.

Q. To what extent has North American Company been advised in reference to major acquisitions made by the Applicant since 1930? [1184]

A. I don't believe there have been any acquisitions since 1930, but if there were they were handled entirely out here and the North American Company directors took no part whatsoever in the

(Testimony of James B. Black.)

negotiations or in the handling of the acquisitions.

Q. There have been no such acquisitions since you have been president? A. No.

Q. Could you summarize the extent of your consultation with the North American Company people in regard to the Hetch Hetchy situation?

A. Well, I could summarize it by saying that it was just a recital of the problem which has been with us for some 15 years and our efforts to solve it. I have kept them posted on the course of the litigation between the City and the Secretary of the Interior and generally the atmosphere surrounding the whole situation. I haven't in any way asked them for any help on it or any advice.

Q. In other words, your communications have been generally in the nature of giving them information? A. That's entirely so, yes.

Q. And keeping them advised as to the developments? A. Entirely so, yes.

Q. Has the Applicant expended any money on campaigns to defeat municipal bond issues in San Francisco with respect [1185] to the acquisition of distributive systems? A. It has.

Q. Has the North American Company given any advice, solicited or unsolicited, as to Applicant's activities in such municipal election campaigns?

A. None whatsoever.

Q. Could you describe the type of problem which you as Applicant's president feel should be submitted to the North American Company in view of

(Testimony of James B. Black.)

the fact that it is the largest stockholder before final action is taken by the Applicant?

A. As a stockholder I don't think that any problem should be considered by it except as it might care to come in our stockholders' meeting and express itself. As directors, the officers of the North American Company who are now on our Board, I think, ought to be kept informed as to what is going on. They ought to have the opportunity, if they care to, to come out here and attend Board meetings and express their opinions.

Q. Has the Board ever requested you to get North American's viewpoint on a matter under consideration? A. Never.

Q. Has any member of the Board ever indicated that in any particular matter the opinion or advice of the North American Company, either in its capacity as stockholder or as a utility expert, might be beneficial? [1186] A. Not to me.

Miss Calkin: I think this is a good place to stop.

The Examiner: We will have the noon recess now until 2:00 o'clock.

(Remarks outside the record.)

The Examiner: Just a minute. We will open the record, Mr. Reporter.

This is Mr. Edward P. E. Troy. Incidentally, his name as it appears in the second session of this hearing is misspelled in the record. If you wish to, you can take it back and fix it. The two initials and

(Testimony of James B. Black.)

the name are run together as one, "Petroy" instead of "Troy".

Mr. Troy, let the record show, has been present at every session of this hearing since his first appearance on the second day of the hearing; has been rather attentively following the proceedings; has consulted at least during the hearing—I don't know to what extent other than that—with Miss Calkin, counsel for the SEC; has had access to and has been examining the transcript of the record at least to a certain extent as we proceeded through this hearing.

Did you want to make a statement, Mr. Troy? You heard what I just said in the record, did you not?

Mr. Troy: I only heard the latter part of it.

The Examiner: You have conferred with Miss Calkin about this case and have been suggesting to her certain questions [1187] to be propounded?

Mr. Troy: Yes.

The Examiner: And perhaps have consulted other than in the hearings that I have not information about?

Mr. Troy: Yes.

The Examiner: You have had access to the proceedings from time to time?

Mr. Troy: Not all of them. I have only read part of them.

The Examiner: You want to make a statement at this time?

(Testimony of James B. Black.)

Mr. Troy: Do you wish me to read this?

The Examiner: Yes. So long as you have brought it up we will settle it now.

Mr. Troy: What?

The Examiner: So long as you have brought it up we will settle it now. What is it?

Mr. Troy: I have here this communication from the Securities and Exchange Commission at Washington:

"United States of America
Before the Securities and Exchange Commission

"At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 19th day of November, A. D., 1940. [1188]

"In the Matter of
PACIFIC GAS AND ELECTRIC COMPANY, et al.,
File No. 31-55

"ORDER DENYING INTERVENTION BUT PERMITTING LIMITED PARTICIPATION IN HEARING

"The Securities and Exchange Commission having on the 4th day of September, 1940, issued its Notice of and Order for Hearing in the above matter;

"Edward P. E. Troy having filed an application to intervene in said proceeding, repre-

(Testimony of James B. Black.)

senting that he is a taxpayer of the City of San Francisco and a consumer of gas and electricity furnished by the above named company;

"It not appearing from the facts alleged in said application that the applicant has sufficient interest in said proceeding to render his admission as a party thereto in the public interest or for the protection of investors or consumers;

"It Is Ordered that said application to intervene be, and the same hereby is denied without prejudice to the right of said applicant to renew his application for leave to intervene and to be made a party to said proceeding at a future date;

"It Is Further Ordered that the said Edward P. E. Troy shall be permitted to participate at any hearing in this matter to the extent of introducing evidence and cross- [1189] examining witnesses; provided, however, that such evidence and cross-examination are competent, relevant and material to the issues involved.

"By the Commission.

"FRANCIS P. BRASSOR,

"Secretary."

Now, do you wish me to read this personal letter?

The Examiner: That is the letter which you received with the copy of the Order?

Mr. Troy: Yes.

(Testimony of James B. Black.)

The Examiner: I think it would be just as well to read it, if you will.

Mr. Troy: This is a personal letter:

"Securities and Exchange Commission
Washington

November 19, 1940

"Office of the Secretary

"Air Mail
"Mr. Edward P. E. Troy
1263 Oak Street
San Francisco, California

"Re: Pacific Gas and Electric Company, et al., File No. 31-55

"Dear Mr. Troy:

"Enclosed herewith is a copy of the Commission's order with reference to your application for permission to intervene in the above proceeding.

"The Commission has authorized me to advise you that [1190] the affidavit attached to your letter of November 14, 1940 does not contain the allegations of fact required by paragraph (b) of Rule 17 of the Rules of Practice, a copy of which is enclosed. In particular your affidavit is deficient in not stating, as required, whether the action you propose to take in the above proceeding is one already taken by another party to the proceeding. If you desire

(Testimony of James B. Black.)

to amend your affidavit to include such information and file an original and eight copies of the same, the Commission, at your request, will again consider your application.

"You will observe the attached order permits you to cross-examine witnesses and introduce evidence subject to the qualification expressed therein. May I suggest that you confer with Miss E. M. Calkin who is representing the Commission in this proceeding.

"The Commission has asked me to express their appreciation for the interest you have displayed in this matter.

"Very truly yours,

(Signed) FRANCIS P. BRASSOR,

Secretary."

I will state that I didn't get an opportunity to confer with Miss Calkin because I didn't receive this until Friday evening, and I called down to the office of the Securities and Exchange Commission and she was not there, but I saw Mr. Clarkson. As Mr. Clarkson stated to me, the proceedings would be over in a few days. Then probably it is not necessary [1191] for me to make further application to the Commission at this time to intervene, but if anything should arise that necessitated it then I will do so.

The Examiner: That is entirely up to you to do just as you like about that.

(Testimony of James B. Black.)

Mr. Troy: I beg your pardon?

The Examiner: That is entirely up to you. You can make a further application or not as you see fit and as you are advised. In connection with your visit to the office, it is true that you had access for a limited time to the transcript on Saturday morning of the proceedings of Friday.

Mr. Troy: Yes. You were very kind to let me see your copy of the transcript. Miss Calkin has been very kind, too. She has let me see hers here at the desk.

The Examiner: You will be afforded an opportunity, then, Mr. Troy, at the conclusion of Miss Calkin's cross examination of Mr. Black to propound any questions which you think may be appropriate after you have conferred with Miss Calkin.

Mr. Troy: Oh, you want me to confer with Miss Calkin first?

The Examiner: I think you should. The letter suggests that you do so, and I think it might be a very wise idea to do so.

Mr. Troy: I know that she has proved herself in this hearing a very able young lady, that she understands what she [1192] is doing and is doing it very efficiently.

The Examiner: We will now continue the hearing until 2:00 o'clock.

(Whereupon, at 12:20 p. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [1193]

(Testimony of James B. Black.)

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p.m.)

The Examiner: I think that we can resume the hearing, if you are all ready.

Whereupon

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Cross Examination

(Resumed)

By Miss Calkin:

Q. Mr. Black, did the North American people take any action, other than that described by you on your direct examination, at the time the dividends on the Applicant's common stock were reduced in 1933?

A. That is all that I had knowledge of.

Q. What discussions, if any, did you have in 1936 with the North American people at the time the dividends were increased on the common stock?

A. I don't recall that I had any. We went along during that year with increasing earnings and we decided at the last quarter that the earnings for the year to date, and the prospects for the next few months were good enough to justify the increase in the dividend. We had earned in the previous

(Testimony of James B. Black.)

[1194] calendar year, as I recall, $2.10, and we earned in 1936 $2.55, and our cash position was good and, as I say, the business outlook was good so I felt that it was time to restore the dividend to the 8 per cent basis, and so recommended to the Board.

I did not consult or get any advice from the North American people with respect to the advisability of it.

Q. When were the North American people first advised as to the increase in the dividend?

A. I don't recall. As I recall, they were advised promptly after it was done. Perhaps I may have told them that I was going to recommend it prior to the time that it was done. I don't remember that I did, but it is quite possible that I would have; and if I had been talking with them within a few days of the meeting I no doubt would have told them what I was going to do.

Q. What discussions, if any, have you had since the dividends were increased in 1936 on the common stock with the North American people on that subject? A. Nothing.

Q. Have you had any correspondence with them relating to dividends on the common stock?

A. No.

Q. Have you ever sought North American's opinion as to the propriety of the common stock dividend prior to the time [1195] it was recommended to the Board? A. Never have; no.

(Testimony of James B. Black.)

Q. Was there any understanding between you and the North American people before you left New York to accept the presidency of the Applicant to the effect that you would inform them as to any change in Applicant's dividend policy on its common stock?

A. No; no agreements of any kind with them.

Q. Would you recommend the non-payment of the dividend on the common stock without advising North American of your contemplated recommendation?

A. I think not. I think on a matter of that kind I would advise them on what I proposed to do in the way of recommending, and give them the opportunity of coming out here and stating their position if they had a contrary view.

The Examiner: That is with respect to a reduction or elimination of dividends?

The Witness: Yes.

By Miss Calkin:

Q. Would you do the same with respect to reduction in the present common stock dividends?

A. Yes, I think I should. I think that any matter of that importance that it would be desirable that all members of the Board should be heard on it. I think they should have the [1196] opportunity to discuss it and express their views.

Q. But in that respect would you be advising the North American people in their capacity as di-

(Testimony of James B. Black.)

rectors of the Applicant or in their capacity as representatives of your largest stockholder?

A. Solely as directors.

Q. And you would not give such advice to stockholders like Pacific Lighting Corporation or Sun Life Assurance Company?

A. I wouldn't give the advice to any stockholder.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 121, which purports to be a copy of a telegram dated December 17, 1935, from Mr. Doolittle to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 122, which purports to be a copy of a telegram dated December 17, 1935 from yourself to Mr. Doolittle, and I will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 121 and 122.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 121 and 122 respectively.

(The photostatic copies of the documents referred to above [1197] marked Commission's Exhibits Nos. 121 and 122, and were received in evidence.)

By Miss Calkin:

Q. Is it customary for the North American people to inquire as to contemplated Board action with

(Testimony of James B. Black.)

respect to common stock dividends prior to the time of their declaration?

A. No, it is not customary, but occasionally they have done so, and I did so occasionally of Mr. Hockenbeamer when there was any doubt in our mind as to the action that would be taken, because of its effect on Western Power Corporation's income which, in turn, would affect Western Power Corporation——

Mr. Phleger (interposing): You mean North American?

The Witness: No, Western Power—the Western Power Corporation Board action as to Western Power's common dividend would be influenced perhaps by the dividend declared on its holdings of common stock. I don't think it would affect North American's particularly, though to some extent it might; but it would very directly affect the Western Power common dividend policy because it was the practice of Western Power Corporation directors to declare practically all of its earnings out in common stock dividends, and its sole source of income practically was their dividends on the P. G. & E. common stock held by it; and where there was a Western Power Corporation Board meeting prior, in a quarter, prior to [1198] the P. G. & E. Board meeting occasionally I inquired from Mr. Hockenbeamer to get the last up to the minute advice as to what P. G. & E. was apt to do with respect to its

(Testimony of James B. Black.)

dividends in order that Western Power Corporation Board might act intelligently.

Those last two exhibits indicate that Mr. Doolittle made the same inquiry of me and referred specifically to the Western Power Corporation meeting.

By Miss Calkin:

Q. Do *you what* percentage of North American's gross income comes from the common stock dividends declared by the Applicant?

A. Well, its gross income as a corporation?

Q. Yes; corporate income.

A. No, I do not.

Q. Do you know whether or not if North American Company received no dividends from the Applicant it could meet its fixed charges?

A. I haven't those figures in mind now.

Q. Mr. Black, what presidents, other than yourself and employees of the former subsidiaries of the Western Power Corporation who were formerly employed by the North American Company or its subsidiaries, have been employed by the Applicant?

The Witness: May I have that question again?

[1199]

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

The Witness: I don't understand the question.

Miss Calkin: It may be a little complicated. I will rephrase it.

(Testimony of James B. Black.)

By Miss Calkin:

Q. Does the Applicant have any persons on its payroll other than yourself and former employees of the subsidiaries of Western Power Corporation, who were formerly employed by the North American Company or its subsidiaries?

A. No, not that I know of.

Q. Are there any former employees of the Applicant now employed by the North American Company or its subsidiaries?

A. Not that I know of.

Q. So you would say, with the exception of the former employees of the Western Power Corporation, there has been no transfer of employees from the Applicant to the North American Company or its subsidiaries, or vice versa?

A. I am certain there have been no transfers. The only reason I qualify my answer is because there may be some engineer or some employee who might have gotten a job with the North American Company subsidiaries that I may never have heard of.

Q. There is no policy of exchanging personnel?

[1200]

A. No. As far as I know the North American Company officers, and the officers of subsidiaries of the North American Company, have no acquaintanceship with our organization at all, except perhaps half a dozen men.

(Testimony of James B. Black.)

Q. Does the Applicant furnish the North American Company with personnel data on men holding key positions with the Applicant?

A. None whatsoever; no personnel data of any kind.

Q. Do you know whether or not employees employed by one subsidiary of the North American Company are frequently employed by other subsidiaries of the North American Company?

A. No, I don't know that.

Q. Do you know whether the North American Company keeps personnel data in its office on the employees of its subsidiaries?

A. No, I don't know whether they do or not.

Q. To what extent have you discussed personnel problems with the North American people?

A. Not at all.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 123, which purports to be a copy of the letter dated August 13, 1937 from Mr. Mortimer to yourself, and what has been marked for the purposes of identification Commission's Exhibit No. 124, which purports to be a copy of a letter dated August 18, 1937 [1201] from yourself to Mr. Mortimer, and I will ask you if you can identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 123 and 124.

(Testimony of James B. Black.)

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 123 and 124 respectively.

(The photostatic copies of the documents referred to were marked Commission's Exhibits Nos. 123 and 124, and were received in evidence.)

The Witness: Are you interested in the story behind those?

By Miss Calkin:

Q. If you have any explanation to make, yes.

A. The explanation is this: That Mr. Corbett, who is referred to in that letter, was an employee of the Engineering Department of the Pacific Gas and Electric Company, and prior to my being made president of the company he got into difficulties with various members of the organization, and it ultimately resulted in his separation from the organization.

Very shortly thereafter he undertook a letter-writing campaign to all of the directors of the company, and the officers, and I think he covered all of the directors of the North American Company, complaining in great detail about the [1202] way he had been treated, and making all sorts of personal accusations against his associates and his superiors in his department, and the officers of the company.

(Testimony of James B. Black.)

I investigated when I was made president and I found that he had been given every consideration and I thought had been treated fairly, and that there was nothing really that I could do about it. He had made such a record that the matter would just have to rest as it was.

This letter from Mr. Mortimer, I presume, was directed to him by Mr. Corbett as a director of the North American Company, and refers to one of the communications that he received from Mr. Corbett.

Q. Mr. Mortimer was at that time a director of the North American Company?

A. I think he was. That is probably why he got the letter because Mr. Corbett, I know, wrote a great many letters to our directors and to the North American Company directors during that period.

Q. Do you know Mr. Mortimer personally?

A. Yes.

Q. Is he in the employ of the North American Company?

A. I don't know that. He was at the time I left New York. I don't know what his status is at the present time.

Q. He was associated with the North American Company [1203] during your acquaintance with him?

A. Yes. He afterwards became a director, and whether he was at that date I am not sure, but it is quite likely.

(Testimony of James B. Black.)

Q. Have you ever requested the North American Company to recommend to you someone to fill a position open with the Applicant? A. Never.

Q. If a major difference of opinion arose between yourself and any of the key men in your organization, or a member of your Board, would you seek North American's advice as to your action in respect thereto? A. I would not.

Q. Have you ever done so?

A. I never have.

Q. Have you ever submitted to North American the advisability of employing or discharging a key member of your personnel? A. Never.

Q. Were there any substantial changes made in the organization of the personnel upon your becoming president? A. No.

Q. Is there any similarity between the organization of the Applicant's personnel and that of other subsidiaries of the North American Company?

Strike the word "other". [1204]

The Examiner: Objection sustained.

A. I really don't know how to answer that. They are all different, but they are all organizations designed to operate and construct public utility property. I don't know—if I had to give you a short answer I would say that our organization is different from any that I know about.

Mr. Phleger: Wouldn't you say in the language of the movies, that any similarity of names to persons living and dead was purely coincidental?

(Testimony of James B. Black.)

The Witness: Well, I would say that the organization of the Pacific Gas and Electric Company had grown up, the organization has grown up over the years and is changing a little all the time, as all organizations do, and that growth and its growth today and changes are based purely on the experience of the management and its determination of what is best for the company.

By Miss Calkins:

Q. I believe you testified that to your knowledge the firm of Sullivan & Cromwell has never been employed by the Applicant?

A. Not to my knowledge; certainly not since I have been president.

Q. Do you know whether or not the Applicant has paid that firm any fees representing an underwriting syndicate [1205] formed in connection with any of Applicant's financing?

A. No, not since I have been president.

Q. Who are the Applicant's regular attorneys?

A. Well, we have a staff of attorneys, and Mr. Bosley is our general counsel; and Mr. Straub is our general attorney; and we employ other attorneys. They are all local, with the exception of one firm in Washington. We have employed Mr. Olney, and we employ local attorneys in local cases around the system.

Q. Is Mr. Olney a Washington attorney?

A. No; a San Francisco man. We have employed Mr. Orrick, and we have employed Mr.

(Testimony of James B. Black.)

Chickering in minor cases—I don't think he has been employed in any very important ones. We have employed Mr. Garret McEnerney and Mr. Herman Phleger, and Mr. Gerdes.

Q. Do you know whether or not any of those attorneys regularly represent the North American Company or any of its subsidiaries?

A. I don't think they represent it regularly or irregularly. I don't know of any connection.

Q. Does your Washington attorney have any connection with the North American Company?

A. Not that I know of.

Q. Do your rate experts confer with the North American people regarding Applicant's rate structure? [1206]

A. No. They perhaps exchange information with them through the Edison Institute. There is a good deal of that going on all the time. But I don't know of anything else.

Q. Do you know whether or not the North American Company gives its subsidiaries any advice on rate matters?

A. Yes; the North American Company has a rate department, or at least a man, or did have, but I can't testify as to the last five years, who does a great deal of work in advising the subsidiaries with respect to their rate structures.

Q. Did that expert, or his department, give the Applicant any such advice during the period 1930 to 1935? A. No.

(Testimony of James B. Black.)

Q. Are taxation problems of the Applicant submitted to North American's accounting department? A. Never.

Q. Has the North American Company ever advised Applicant in respect to tax matters?

A. No.

Q. Does it give such advice to its subsidiaries?

A. Yes, it does, or did. I shouldn't testify to the last five years because I am not familiar with what happened during that period. But as far as I know, up to 1935, they did advise on tax matters with their subsidiaries.

Q. Did the North American Company during that period have tax experts in its employ? [1207]

A. Yes.

Q. Were they primarily engaged in advising subsidiaries of the North American Company on tax problems?

A. At least one of them was advised, that is, engaged entirely on tax problems.

Q. Did that person give the Applicant any advice on tax matters during that period?

A. Never to my knowledge.

Q. Is the system of accounting used by the Applicant the same as that used by subsidiaries of the North American Company?

A. I don't know what system the subsidiaries of the North American Company use, but our classification of accounts is promulgated by the Railroad Commission of the State of California.

(Testimony of James B. Black.)

Q. The North American Company does maintain an accounting department, does it not?

A. Yes, in New York; yes.

Q. Do *you what* contacts, if any, that department has with the subsidiaries of the North American Company. A. I don't know now; no.

Q. Do you know anything about the contacts during the period you were in the employ of the North American Company?

A. Well, very little except the contacts with the subsidiaries of the Western Power Corporation. The North [1208] American Company accountants knew of the classification of accounts of the Railroad Commission of California under which these subsidiaries carried their accounts, and they knew generally, I think, of the practice of the California subsidiaries. At least, I tried to keep myself informed.

Q. Do you know whether or not the accounting department performs services for the North American subsidiaries, or did during that period?

A. You mean the accounting department of the North American Company?

Q. Yes.

A. I don't recall that they did. The accounts, I know, were kept out here; the accounts of the California subsidiaries were kept out here.

Q. Do you know whether or not the subsidiaries of the North American Company seek the advice

(Testimony of James B. Black.)

of the accounting department of the North American Company?

A. I don't believe the California companies did. I don't think there was any occasion for that.

Q. Are the services of the North American's accounting department available to the Applicant?

A. No. They never have been offered.

Q. Have they ever been used?

A. They never have been used.

Q. Would you say that the North American Company had [1209] never in no manner affected the accounting practices of the Applicant?

A. I should say that, yes.

Q. Does the North American Company have an insurance expert in its employ?

A. I don't know as to the last five years. It is my recollection that there was someone there who had some knowledge of insurance practices and was available for the use of the subsidiaries, but I am not sure. I am not clear on that.

Q. Do you know whether or not the Applicant has ever received advice on insurance matters from the North American Company?

A. I know we have not. We have never asked it.

Q. To your knowledge does the North American Company have a financial interest in any insurance company? A. Not to my knowledge.

Q. Who determines with what companies the policies of the Applicant shall be placed?

A. I do.

(Testimony of James B. Black.)

Q. Have you ever discussed the advisability of placing insurance with particular insurers with the North American people? A. No; never.

Q. Generally speaking, is the insurance of the [1210] Applicant carried with the same companies as it was carried prior to your becoming president of the Applicant?

A. It is, yes. We have changed our insurance policy very materially.

Would you be interested in my testifying as to that?

Q. You might explain it briefly.

A. Generally, prior to my election as president, the company carried most of its own insurance and they had a reserve of, I think, $3,000,000 set up as an insurance reserve.

I changed that to a policy of insuring with companies, with underwriters, all of what might be called catastrophic insurance, or catastrophic coverage, which would take care of very large losses, and limiting the amount that the company would carry very materially.

The class of coverage that the company carries itself is on the type of property where the exposure is not great, and there couldn't be any likelihood of large loss occurring.

But the catastrophic coverage will run up to as high as $12,000,000, in case of earthquake and fire losses on the system. That has all been placed with companies, largely through brokers, and without

(Testimony of James B. Black.)

consultation or even discussion with the North American directors.

Q. Have any of the North American people ever recommended the placing of Applicant's policies with any [1211] particular company?

A. Never.

Q. To what extent, if any, has the North American Company been consulted with reference to the Applicant's franchise problems?

A. Not at all.

Q. Have any of its representatives ever participated in campaigns or franchises sought by the Applicant? A. Never.

Q. Mr. Black, are you familiar with the fiscal service contracts which were in effect between the North American and its subsidiaries prior to the effective date of the Public Utility Holding Company Act of 1935?

A. I don't recall them in any detail. I know that the North American Company did perform certain fiscal services for its subsidiaries, usually of the nature that would have to be performed by banks or trust companies in New York City, and they were charged for those services.

Q. Did the Applicant ever have such a contract with the North American Company?

A. Never.

Q. Do you know why not?

A. There was no occasion. It conducts its own business affairs in New York and San Francisco,

(Testimony of James B. Black.)

whatever they have to conduct, and they still do.

[1212]

Q. Did the North American Company, although such a contract did not exist between it and the Applicant, render any services to the Applicant of a financial or fiscal nature from 1930 to 1935?

A. The only thing that might come under that head that I recall is the services which I performed without charge for Mr. Hockenbeamer in signing preferred stock certificates of the Great Western Power Corporation and the California Electric Generating Company which were transferred in New York.

Q. Did the North American Company ever act as transfer agent for the Applicant? A. No.

Q. Did it ever act as coupon paying agent?

A. No.

Q. Did it ever perform any of the services provided for in the fiscal service contract?

A. No.

Q. Are you acquainted with the fact that the North American Company at one time owned and operated a private wire between it and several of its subsidiaries? A. Yes.

Q. Do you know whether or not the Applicant's offices were ever connected with that wire?

A. No, they never were, nor were the California [1213] subsidiaries.

Q. There has been some testimony concerning the Station Advisory Committee which, I believe,

(Testimony of James B. Black.)

was composed of the principal engineers from the operating companies in the North American system. Are you familiar with that committee?

A. Yes; generally.

Q. What were its functions?

A. It assembled data on steam plant economies on the various systems and various subsidiaries of the North American Company, and prepared reports on the various steam plant operations, which were submitted to the executives of the North American Company's subsidiaries and to the officers of the North American Company.

Q. Did the Western Power Corporation subsidiaries, prior to 1930, have representation on that committee?

A. I am not sure as to that, but the California subsidiaries received copies of the reports of the Station Advisory Committee, and I am quite sure had representatives on it, although I do not recall specifically.

Q. Has the Applicant ever received copies of the reports of that committee?

A. Never to my knowledge.

Q. Has the Applicant ever been represented on that committee? [1214] A. No.

Q. Why not?

A. As I say, it runs its own business, it has its own problems, and it has never taken part in any of the activities of the North American Company system. There has been no occasion for it.

(Testimony of James B. Black.)

Q. Has the North American Company ever requested that engineers employed by the Applicant serve on this committee?

A. Never to my knowledge.

Q. If the invitation were made would it be accepted?

A. No. I don't think it would be worth while for us to spend time and money on that sort of an activity.

Q. Have any representatives of the North American Company ever discussed with you the advisability of the Applicant having representation on this committee? A. They have not.

Q. I am informed that a number of group purchase contracts have been executed between the North American Company and various manufacturers for the purpose of obtaining discounts for its various operating companies based upon group purchases. Are you familiar with those group purchase contracts?

A. I was; yes. The California subsidiaries of the North American Company participated in some of them. They [1215] were able to get discounts on the purchases from certain manufacturers of certain equipment which they could not have earned as a result of their own volume of purchases.

Q. Has the Applicant ever been one of the operating companies listed in said contracts as entitled to the benefits of such discounts? A. Never.

(Testimony of James B. Black.)

Q. Has the Applicant ever received discounts as provided for by the group purchase contracts in existence between the North American Company and the manufacturers? A. Never.

Q. Has any representative of the North American Company ever discussed with you the desirability of including the Applicant as one of the companies entitled to receive the benefits of such contracts? A. No.

Q. Has the Applicant ever requested the North American Company to be included as one of the beneficiaries in its group purchase contracts?

A. Never.

Q. Why has the Applicant not deemed it necessary or advisable to participate in these contracts?

A. Well, there is reason enough in that our purchases out here would probably give us the maximum discount. In any event, we wouldn't care to participate in any such [1216] contract with the North American Company, or any other company.

Q. Are you familiar with the departments into which the personnel of the North American Company are divided? A. I was.

Q. What departments were they?

A. There was the accounting department, the statistical department, the treasury department; and they had a publicity department, a rate department —that is all I recall at the moment.

Q. How about the secretary?

A. The corporate secretary's department.

(Testimony of James B. Black.)

The Examiner: We will take a short recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: You may resume.

By Miss Calkin:

Q. Have any of the departments which you have named ever, to your knowledge, performed any work for the Applicant? A. They have not.

Q. I am informed that Mr. Freeman, Sr., Vice-President of the North American Company, has charge of the reports made by that company and its subsidiaries to the Securities and Exchange Commission, and supervises North American's accounting problems. Has Mr. Freeman, or any of his [1217] subordinates, ever supervised or participated in the preparation of any registration statement filed by the Applicant with the Securities and Exchange Commission?

A. They have never taken any part in such preparation. Mr. Freeman, since he has been a director would, of course, be furnished with copies of any registration statement which we filed, but I don't believe that he was a director at the time we did our last public offering in 1936.

Q. Was Mr. Freeman furnished a copy of the registration statements prior to the time they were printed and in final form?

(Testimony of James B. Black.)

A. He would be, in common with all other directors, furnished with copies of the reports just before they were ready to be signed. Probably the final report would be all that they would see, the final statement.

Q. Does Mr. Freeman have general supervisory authority over Applicant's Accounting Department?

A. He has no authority whatsoever over it.

Q. To what extent has he participated in accounting problems of the Applicant?

A. Not at all.

Q. I am informed that Mr. Reed Hartel, secretary of the North American Company, has charge of and supervises matters relating to the corporate record, in compliance with the corporate laws, for the North American Company [1218] and its subsidiaries. Does, or has Mr. Hartel performed any work of a similar nature for the Applicant?

A. Nothing at all.

Q. Does Mr. Hartel prepare the draft of the minutes of the Applicant's Board of Directors?

A. He does not.

Q. What about the annual stockholders' meeting? A. He has nothing to do with it.

Q. Does Applicant's corporate department confer with Mr. Hartel regarding the maintenance of corporate records in compliance with various corporate laws? A. Not at all.

Q. Have you ever conferred with Mr. Hartel regarding any matters relating to the Applicant?

(Testimony of James B. Black.)

A. No, I never have.

Q. I believe that Mr. Sealey, treasurer of the North American Company, and Mr. Preger, the comptroller, stand ready to give advice, and frequently do advise North American subsidiaries on accounting matters and practices. Does the accounting department of the Applicant have any contacts with Mr. Sealey or Mr. Preger on such matters?

A. None at all.

Q. Has the North American Company ever advised the Applicant that its accounting department would give free advice on any accounting problems that it might have? [1219]

A. Not to my knowledge.

Q. Have you ever requested that the North American Company make the services of its accounting department available to the Applicant?

A. I have not.

Q. Mr. Black, are you acquainted with the organization located on the 18th floor of the North American Building at 60 Broadway in New York City, composed of a staff of persons on the payroll of some of the operating companies in the North American system?

A. That is a development that took place after I left.

Q. Do you know Mr. C. E. Neal?

A. Yes. He is in charge of the rate department, or was in charge of the rate department of the North American Company.

(Testimony of James B. Black.)

Q. Do you know Mr. E. W. Lenig? A. Yes.

Q. And who is he?

A. He was an assistant to Mr. Smith, who was in charge of the statistical department when I was there.

Q. Are you acquainted with Mr. Johannsen, who also works in that organization? A. Yes.

Q. Do any members of the staff to which I just [1220] referred as occupying the 18th floor of the North American Building in New York City work for the Applicant? A. No.

Q. Has that staff ever done any work for the Applicant?

A. No. It is possible that some incidental reports might have been prepared in that department and were sent to Mr. Hockenbeamer as a matter of accommodation. I don't know that there was—they were never any reports that had to do with the operation of the Pacific Gas and Electric Company. But it is possible that some report might have been prepared there of a comparative nature, for instance, showing the financial setup, or the operating results of utilities all over the country, which might have included the Pacific Gas and Electric Company, and might have been sent to Mr. Hockenbeamer. That would be the extent of it. I don't know that that has occurred.

Q. Have you ever had any communications with the personnel of that organization?

(Testimony of James B. Black.)

A. Never.

Q. Are any of the employees of that organization on the payroll of the Applicant?

A. They are not.

Q. Does the Applicant contribute to the rental of the space occupied by the personnel that I have just referred to? [1221] A. It does not.

Q. Does the Applicant have no work to be performed which, in your opinion, can best be done in New York City by the staff? A. It has none.

Q. Have you ever discussed with the representatives of the North American Company the advisability of the Applicant having representatives on this staff? A. I never have.

Q. Has this group of persons ever assisted the Applicant in the preparation of its registration statements? A. Never.

Q. Mr. Black, could you compare the contacts which existed between the North American Company and Applicant and the work, if any, performed by the North American Company for the Applicant from 1930 to 1935, with such contacts and such work as have been performed since then?

A. There has never been any work performed by the North American for the Pacific Gas and Electric Company.

Q. I have been informed that certain changes occurred in 1935 with respect to the relationship between the North American Company and certain companies in which it had substantial investments.

(Testimony of James B. Black.)

What changes occurred at that time in relationship between the Applicant and the North American Company, that time having specific reference to the effective [1222] date of the Public Utility Holding Company Act of 1935?

A. The relationship of the North American Company to the Pacific Gas and Electric Company is purely as a stockholder and, as such, it has been a stockholder since 1930.

Q. In other words, it is your opinion that Applicant's relation to the North American Company is the same today as it was during any time between 1930 and 1935?

A. Purely as a stockholder from 1930 to date.

Q. Do you submit a draft of the Applicant's annual report to stockholders to the North American Company prior to the time it is printed?

A. I submit a draft, if I can get the time to do it, to the directors of the Pacific Gas and Electric Company, and occasionally they have gotten—I have been able to get them to the officers of the North American Company who are directors of the Pacific Gas and Electric Company, but unfortunately I have never been able to get it to them in time to enable them apparently to make any suggestions with respect to any changes or ideas that they may have prior to the printing of the report?

Q. To what extent, if any, has the North American Company participated in the preparation of this report?

(Testimony of James B. Black.)

A. They have not participated to any extent.

Q. Mr. Black, referring to Commission's Exhibit No. 69, and calling your attention to the final paragraph of [1223] this letter, what does the "pamphlet report" refer to?

A. That refers to the annual report to stockholders. That word was probably used to distinguish it from the quarterly interim reports which are made by the president to the stockholders.

I might say that I always requested a few extra copies of that report from Mr. Hockenbeamer because the people around the Street in New York would occasionally call for a copy of that report, or ask us to get it for them, and in order to avoid annoying Mr. Hockenbeamer by writing letters in each individual case I used to get a few reports and hand them out.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 125, which purports to be a copy of a letter dated March 29, 1930 from Mr. Freeman to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 126, which purports to be a copy of a letter dated April 5, 1937 from yourself to Mr. Freeman. Can you identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Applicant's Exhibit No. 125 and 126.

The Examiner: They will be received in evidence and marked Applicant's Exhibits Nos. 125 and 126.

(Testimony of James B. Black.)

(The photostatic copies of the letters referred to above were [1224] marked Commission's Exhibits Nos. 125 and 126 and were received in evidence.)

The Witness: One of them—do you wish me to comment on them?

By Miss Calkin:

Q. Yes. You may do so.

A. The one from Mr. Freeman to me contains his comments on the 1936 annual report of the Pacific Gas and Electric Company. He states that it makes an excellent showing and he congratulates us, and so forth. Then he says:

"There are one or two points regarding which I thought I would drop you a line for whatever my thoughts may be worth."

Then he comments on the presentation of the income accounts and the balance sheet, and gives his ideas as to how they could be made more readable.

Q. Is he commenting upon the draft of the 1936 annual report or upon that report in its final form?

A. It sounds to me like it was the final report. March 29 is the date. Our reports, I think, must be in the hands of the stockholders at least ten days prior to the annual meeting. I am quite sure that is the final report. In any event, the report would be in the printers' hands by that date.

Q. So the comments made by Mr. Freeman in his letter [1225] to you did not result in a change in the stockholders' report for 1936?

(Testimony of James B. Black.)

A. No, no. It would have come entirely too late if he was referring to the draft. It would have come entirely too late to have been incorporated in the final report. It is quite likely that he is referring to the final report which we sent him.

Mr. Phleger: Mr. Black, the changes suggested by him have never been made in any later report, have they?

The Witness : Perhaps I had better read what it says. (Referring to the communication) I think one of them was accepted. I note I say:

> "It has been the practice to follow the order of the Auditor's reports in setting up financial statements, but I believe your suggestion as to the precedence of the income statement is a good one."

Our auditors, Haskins & Sells, as I recall, submit their report with their certificate to us in a form which sets up the balance sheet first and the income statement second. Mr. Freeman suggested that that be reversed. I think I did reverse it. I think it was a good suggestion. That was not done that year.

His other suggestions were not followed.

The Examiner: Then or at any time thereafter, as I understand it? [1226]

The Witness: Yes. They were not followed at that time in any particular. But, as I recall, and my memory is refreshed by the statement here, the sentence which I read would indicate that we prob-

(Testimony of James B. Black.)

ably did set up the income statement first in subsequent reports.

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 127, which purports to be a copy of a letter dated March 27, 1939 from Mr. Fogarty to yourself. Can you identify that document?

A. Yes. That is just a congratulatory letter on the 1938 annual report.

Miss Calkin: We offer in evidence Commission's Exhibit No. 127.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 127.

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 127 and was received in evidence.)

By Miss Calkin:

Q. Does Commission's Exhibit No. 127 constitute the only correspondence which you had with Mr. Fogarty regarding the 1938 annual report to the stockholders?

A. That is the only one that I recall.

Q. Mr. Black, do you have any information gleaned from what others have told you, or from documents that you have [1227] examined since you have been president of the Applicant, as to how the National City Company got the leadership of Applicant's financing about 1921?

(Testimony of James B. Black.)

A. No. I don't know anything about that.

Q. Was the National City Company ever considered a California house? A. Not by me.

Q. Do you know what representative of the National City Company carried on most of the negotiations with the Applicant respecting its financing prior to 1930?

A. I only know by hearsay as to that. I understood that Mr. Stanley Russell was the man who carried on the negotiations in regard to the Pacific Gas and Electric Company affairs.

Q. Contemporaneous with the 1930 negotiations, resulting in Applicant's acquisition of the subsidiaries of Western Power Corporation, did you have any discussions with Mr. Hockenbeamer concerning who would head the future financing of the Applicant? A. None.

Q. Was there anything said about what bankers would participate in such financing as members of underwriting syndicates? A. In 1930?

Q. Yes. [1228] A. Nothing was said.

Q. The subject of Applicant's future security issues was never discussed from the standpoint of who the underwriters would be?

A. Not by me.

Q. Did Western Power Corporation, or any of its subsidiaries, do any financing from 1925 to 1930?

A. Yes; there were several pieces of financing.

Q. Who headed the underwriting syndicate in

(Testimony of James B. Black.)

connection with the financing of the subsidiaries of Western Power Corporation?

A. The San Joaquin Light and Power Corporation financing, I recall an issue, I think it was $25,000,000 in 1927, was handled by Pierce-Fair & Co., that is, jointly by Pierce-Fair & Co. and Blyth Witter & Co.

If there was any of Great Western Power financing that went over into that period—I know there was some in the previous five years, and it was headed by E. H. Rollins & Sons.

Q. Did you handle that financing?

A. No.

Q. Where was it handled?

A. Subsequent to the acquisition of control by the North American Company of Western Power Corporation in 1927, it was handled in the North American Company offices. Prior to that time it was handled largely by Mr. H. P. Wilson. But [1229] prior to 1924 it would be handled by Mr. Wilson and Mr. Mortimer Fleishhacker, who was president of the Great Western Power Company of California.

Q. The $25,000,000 issue of the San Joaquin Company that you have testified to occurred after North American acquired control of that company through Western Power Corporation, did it not?

A. As I recall that it was in 1927.

Q. That was subsequent to the North American's acquisition of the control? A. That is right.

(Testimony of James B. Black.)

Q. And you say that financing negotiations in respect thereto were carried on in New York City?

A. Yes. Mr. Dame and Mr. Gruhl carried them on.

Q. What banking houses, if any, did you consider would have a historical interest in the Applicant's financing, which houses had been previously associated with the financing of the Western Power Corporation system?

A. It would be purely historical. Rollins & Sons, that is, E. H. Rollins & Sons, had been identified with the Great Western Power Company of California financing, and with Western Power Corporation, and the old Bonbright & Co., the old firm, and Pierce-Fair & Co., and Blyth Witter, at that time, had been active in the San Joaquin Light & Power financing. [1230]

Q. I believe the evidence shows that the Applicant issued $25,000,000 principal amount of bonds in July of 1930, which issue was headed by the National City Company. What part, if any, did you have in the determination of the Applicant to issue these bonds?

A. I had nothing whatsoever to do with it.

Q. Did Mr. Hockenbeamer confer with you regarding the issuance of these securities as to the price at which they were to be sold, and related matters? A. He did not.

Q. Who selected the National City Company to head this piece of business, do you know?

(Testimony of James B. Black.)

A. I don't know; I assume it was Mr. Hockenbeamer.

Q. Did Mr. Hockenbeamer, or any then member of Applicant's Board, consult you regarding who should be syndicate manager for this issue?

A. No.

Q. Did you have anything to do with the selection of other members of this syndicate?

A. I did not.

Q. Who was the American Securities Company at that time, if you know?

A. That was the security affiliate of the American Trust Company.

Q. In San Francisco? [1231]

A. In San Francisco; yes.

Q. Was Pierce-Fair & Co. a California house?

A. Yes.

Q. Was E. H. Rollins & Sons a California house?

A. No.

Q. Did you request Mr. Hockenbeamer to give consideration to any banking firm, either those which did or did not get a participation in the July 1930 issue? A. I don't believe I did.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 128, which purports to be a copy of a telegram dated July 22, 1930, from Dean Witter to yourself, and I will ask you that if you can identify that instrument?

A. Yes. That is a telegram from Dean Witter to me, who has his investment, and his brokerage

(Testimony of James B. Black.)

house here, Dean Witter & Co. dated July 22, asking me to intercede for him in his behalf with Mr. Hockenbeamer in connection with the offering which the Pacific Gas and Electric Company was considering at that time, bond offering.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 129, which purports to be a copy of a telegram dated July 22, 1930, from yourself to Mr. Witt. Can you identify that document?

A. Yes. It refers—it is a wire which I sent to [1232] Mr. Witter to the effect that the subject of his wire had been under discussion several weeks, but that I knew of no decision to proceed.

It further says: "The matter is in the president's hands"—that refers to Mr. Hockenbeamer—"and suggest your close contact with him. Regards."

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 128 and 192.

The Examiner: They will be received in evidence and marked Commissioner's Exhibits 128 and 192 respectively.

(The photostatic copies of documents referred to were marked Commission's Exhibits Nos. 128 and 129, and were received in evidence.)

By Miss Calkin:

Q. Upon the receipt of Commission's Exhibit No. 128, did you request Mr. Hockenbeamer to give Dean Witter & Co. a participation in the 1930 issue?

(Testimony of James B. Black.)

A. I did not. As far as I recall that was the only communication that I had with him.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit 130, which purports to be a copy of a telegram dated July 24, 1930 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No. 131, which purports to be a copy of a telegram dated July 24, 1930 from Mr. [1233] Hockenbeamer to yourself, and will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 130 and 131.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 130 and 131 respectively.

(The photostatic copies of the telegrams referred to were marked Commission's Exhibits Nos. 130 and 131 and were received in evidence.)

A. (continuing) —The first telegram is one from me to Mr. Hockenbeamer stating:

"Am informed various sources yesterday and today that you have sold block of four and onehalf's stop if story correct would appreciate details stop regards."

Q. Was Applicant's No. 131 the first knowledge you had that the Applicant sold the bonds issued in 1930?

(Testimony of James B. Black.)

A. Apparently it was because Mr. Hockenbeamer replies on July 24th and gives the details. He says:

"We have sold twenty five million dollars first refunding four and onehalfs due 1960 to National City Company at ninety three and onehalf costing four point nine two stop Railroad Commission hearing set for Friday this week and we are promised prompt action."

[1234]

Q. I hand you what has been marked for purposes of identification Commission's No. 132, which purports to be a copy of a letter dated July 28, from yourself to Mr. Witter. Can you identify that document?

A. Yes. That is a letter from me to Mr. Witter in which I state I was sorry to learn that he did not land in first place in the financing syndicate for the recent issue of the Pacific Gas and Electric Company bonds.

I further said: "I assume you were successful in getting some to sell. We discussed this subject at the time of our recent visit to San Francisco."

That evidently refers to the visit of Mr. Gruhl and myself here in San Francisco a day or two after the closing of the transaction whereby North American Company obtained the control of Western Power former California subsidiaries, and our visit was to attend the convention of the National Electric Light Association, which was held in San Francisco in that month.

(Testimony of James B. Black.)

Q. What is the subject referred to?

A. The subject evidently refers to the contemplated bond issue. It says: "But until the receipt of your wire we had not heard that it had been definitely decided to proceed."

That apparently was discussed, the possibility of an issue probably was discussed at the time of our visit here in [1235] 1930, and after we left the decision to proceed was made and I, as a director, was not advised of it until I heard about it from one of the houses who was attempting to get a position in the group.

When I was advised of it I told him that the matter had been discussed and referred him to the president, but I didn't know a decision had been made.

The Examiner: Did the discussion you had include the question of whether or not Dean Witter would be included in the underwriting group?

The Witness: Frankly, I don't remember the discussions. *There* were probably of a very vague nature. They were here during this convention and I doubt if there was any detailed discussions at all. Certainly we took no part in formulating the policy as to whether there should be an issue even, let alone who should participate in it.

Miss Calkin: We offer in evidence Commission's Exhibit No. 132.

The Examiner: It will be received.

(Testimony of James B. Black.)

(The photostatic copy of letter referred to was marked Commission's No. 132 and was received in evidence.)

By Miss Calkin:

Q. Other evidence shows that the Applicant sold another $25,000,000 principal amount of its bonds on or about January [1236] 12, 1931 to a syndicate headed by the National City Company and composed of the same houses as the 1930 syndicate. When and from whom did you first learn that this financing by the Applicant was contemplated?

A. I don't recall.

Q. Did Mr. Hockenbeamer, or any member of the Applicant's Board, discuss with you the necessity of this financing before it was consummated?

A. Not to my recollection.

Q. Did you participate in any discussions prior to the formation of the 1931 syndicate relative to who its manager and who its members would be?

A. I did not.

Q. Do you know who selected the National City Company to head the syndicate which purchased this issue?

A. I do not. I assume Mr. Hockenbeamer did.

Q. Is it customary for the issuer or the syndicate manager to determine the membership of the syndicate and their respective participations?

A. I can only testify as to myself. I reserve the right to make final decisions on all points. Of

(Testimony of James B. Black.)

course, I want the advice of the syndicate manager on the members of the group and their participations, but if there is any difference of opinion the decision is made by the company.

Q. Did you personally carry on any negotiations in [1237] respect to the January 1931 issue of the Applicant? A. No.

Q. Did you discuss the question of price or spread with Mr. Hockenbeamer?

A. I have no recollection of it.

Q. Did any banking houses solicit your aid in getting them a participation in the 1931 issue?

A. I don't recall it except—no, Witter's solicitation was the 1930 issue. No, I don't recall it.

Q. During 1930 and 1931 did Blyth & Co., through any of its representatives, ever express to you any dissatisfaction over second position which that company had in the 1930 and 1931 issues?

A. Not to my recollection.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 133, which purports to be a copy of a letter dated November 9, 1934, from yourself to Mr. Hockenbeamer. Can you identify that document?

A. Yes. Do you wish me to comment on it?

Miss Calkin: I would like to offer it in evidence first as Commission's Exhibit No. 133.

The Examiner: It will be received in evidence and so marked.

(Testimony of James B. Black.)

(The photostatic copy of the letter referred to was marked [1238] Commission's Exhibit No. 133 and was received in evidence.)

A. (continuing) This is, in effect, the relaying of some information to Mr. Hockenbeamer which came to me from Mr. Miller, of White, Weld & Company, an investment banking house, relating to the private sale of securities, which I thought he would be interested in. [1239]

Q. You were suggesting the possibility of a private placement of Applicant's bonds through the efforts of White, Weld & Company, were you not?

A. I was not.

Q. Did you receive an answer to this letter?

A. I don't know whether I did or not.

Q. None of the Applicant's bonds were placed at that time by White, Weld & Company?

A. No. The letter did not require an answer, and I don't know whether I did or not, whether I received one or not.

Q. Do you recall whether or not you pursued the matter further than indicated by that letter?

A. No, I don't think I did.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 134, which purports to be a copy of a letter dated February 29, 1935, from Mr. Hockenbeamer to yourself. Can you identify that document?

Mr. Gerdes: You stated February 29. It is February 28.

(Testimony of James B. Black.)

Mr. Phleger: It is 28.

Miss Calkin: It looks like 29 here.

The Examiner: There wouldn't be any 29 that year.

A. Yes. This is a letter which apparently accompanied copies of the registration statement. It is pretty dim and [1240] I cannot make it all out.

Mr. Phleger: Here (indicating) is another copy.

By Miss Calkin:

Q. You did receive such a letter from Mr. Hockenbeamer?

A. Apparently I did. I don't specifically recall it, but it was a letter of transmittal in which he sent to me, as a director, a copy of the registration statement which he was preparing to file with the Securities and Exchange Commission covering the issue of $45,000,000—a bond issue in that amount.

Miss Calkin: We offer in evidence Commission's Exhibit No. 134.

The Examiner: The document will be received in evidence and marked Commission's Exhibit No. 134, being dated February 28 or February 29, whichever it is.

(The document referred to was marked Commission's Exhibit No. 134 and received in evidence.)

A. (continuing) He closes by saying:

"The main thing I want to accomplish at the moment is to give you an opportunity of exam-

(Testimony of James B. Black.)

ining the enclosures with this letter before the meeting."

He evidently refers to the registration statement.

By Miss Calkin:

Q. That letter refers to the bond issue that was sold to a syndicate headed by Lazard Freres & Co. in the spring of [1241] 1935?

A. That is correct.

Q. Do you know whether or not Lazard Freres & Co. got all of the management fee in the first 1935 issue?

A. No. I have forgotten the details of it.

Q. Who is Lazard Freres & Co.?

A. It is an investment banking house in New York.

Q. Do you know of any of its principal partners?

A. I know Mr. Stanley Russell who, I believe, has the title of president; and Mr. James Jackson, who has the title of vice-president, I believe.

Q. Is that the same Mr. Russell that was at one time associated with the National City Company?

A. That is correct.

Q. Why didn't the National City Company head this piece of business, if you know?

A. I think the National City Company was out of business at that time as an affiliate of the National City Bank.

(Testimony of James B. Black.)

Q. That is the bank with which Mr. Charles Mitchell was formerly connected?

A. Yes. He was Chairman of the Board of the bank.

Q. Do you know what firm or banking house Mr. Mitchell is now associated with?

A. Yes; with Blyth & Co.

Q. Does he operate out of the New York office of Blyth [1242] & Co. or out of the San Francisco office? A. The New York office.

Q. Prior to the $45,000,000 1935 issue did Mr. Hockenbeamer confer with you regarding the type of security that was advisable to issue, the amount of the issue, and so forth?

A. I don't recall that he did with respect to the type and the amount. He did confer with me as to the price he ought to get.

Q. Was that immediately prior to the signing of the underwriter's contract?

A. I don't recall precisely. It might have been any time within 30 days; perhaps more often than once.

Q. Was that while you were in New York?

A. Yes.

Q. Do you know who selected Lazard Freres & Co. to head this piece of business?

A. I do not. I assume it was Mr. Hockenbeamer.

Q. You don't know to what extent Mr. Hockenbeamer consulted the directors, other directors, in regard to Lazard Freres & Co.?

(Testimony of James B. Black.)

A. No, I do not.

Q. Did he consult with you?

A. Yes. He asked me about all of the banking houses that were included in the group and some that were not. That was a period of readjustment in the investment banking world [1243] due to the separation of the banking affiliates and changes in groups, and he was attempting to get all the information that he could with respect to their ability to do a good job. He asked me what I thought of the personnel and the organization of a good many of them, and among them was Lazard Freres & Co.

Q. Do you recall Mr. Hockenbeamer having been in New York in the late fall of 1934?

A. I think that was the date that he came east to testify in connection with the Western Power Tax matter. I am not sure of that, but I think he was there about that time.

Q. Did you have any extensive discussion with him at that time about the proposed refinancing of the Applicant in 1935?

A. I don't recall any discussions at that time.

Q. Did Mr. Hockenbeamer ever tell you why he recommended Lazard Freres & Co. to the Board of Directors, as he apparently did from the testimony of the directors who have testified?

A. He told me that he had been doing business with Stanley Russell for a great many years, and had a great respect for him as a bond man; that he was well thought of in the profession; and he

(Testimony of James B. Black.)

said that he had known of Lazard Freres & Co., not the investment banking firm which was newly organized but the commercial banking house which had apparently a rather large position in the investment banking field, at least its [1244] partners did, and that he felt that Mr. Russell had been so helpful to him and had established such a real value as a bond man, that he would carry on with Lazard and help do a good job as head of the syndicate.

That, summed up, is about what he told me.

Q. Do you know whether or not any other banking houses sought the leadership of Applicant's financing in March of 1935?

A. Well, there were a good many of them that were either wanting the leadership or wanting a bigger position than they finally got.

Q. Prior to March 28, 1935, or approximately that date, did the representatives of any banking house request you to assist them in getting the leadership of or participation in this business?

A. Prior to what date?

Q. The issuance or the sale of the bonds, the first issue in 1935?

A. There were several of them talked to me during that period. Whether they specifically asked to be the leader or whether they were just wanting to make sure that they were going to be given a large participation, I don't specifically recall.

(Testimony of James B. Black.)

Q. Did they talk to you in New York?

A. Yes. [1245]

Q. Do you know whether representatives of any of those houses came to the coast in connection with that financing?

A. Mr. Russell, I believe, was out here. I don't know of any others offhand.

Q. Do you recall talking to Mr. Russell about Applicant's financing as early as December 1934?

A. No; I can't recall the dates.

Q. I hand you, for purposes of refreshing your recollection, what purports to be a copy of a memorandum dated December 27, 1934, by Mr. Russell and refer you to the first sentence thereof.

A. I apparently had some conversation with Mr. Russell in December.

Q. You knew as early as that time that the Applicant was contemplating some refunding?

A. Apparently I did.

Q. Do you recall whether or not Mr. Russell discussed with you at that time the desire of Lazard Freres & Co. to head any contemplated financing of the Applicant?

A. I don't recall it, but I presume that was the purpose of his conversation.

Q. Do you recall any efforts subsequently made by Mr. Russell, and prior to the formation of the underwriting syndicate which purchased the 1935 issue, to get you to intercede on his behalf to give

(Testimony of James B. Black.)

the leadership of this piece of business [1246] to Lazard Freres & Co.?

A. I can't say that I didn't have conversations with him; I can't say that I did. I just don't recall it. But I don't recall any particular pressure on his part to get me to intercede for him. I rather gathered the impression from his contacts with me that he, knowing that I was a director of the company, was rather covering the ground. He knew Mr. Hockenbeamer would make the decision and when the time came that he would have to deal with Mr. Hockenbeamer.

Q. You never requested that Mr. Hockenbeamer give the firm of Lazard Freres & Co. the leadership of the March 1935 business? A. No.

Q. Do you know how the following firms got participation in the issue, first, Harriman & Co.?

A. No. I don't know anything about the makeup of those 1936 syndicates or how they were made up, or how the apportionment was finally determined on.

Mr. Phleger: You mean 1935?

The Witness: Yes; the 1935 syndicate. I did, as I previously testified, give to Mr. Hockenbeamer my opinion of the strength of each one of them.

By Miss Calkin:

Q. Did the representative of any of the following [1247] houses call on you, do you now recall, prior to the sale of the first financing in 1935: Blyth

(Testimony of James B. Black.)

& Co., E. B. Smith & Co., First Boston Corporation——

A. (interposing) May I answer those one at a time?

Blyth & Co., yes.

Q. E. B. Smith & Co.? A. Yes.

Q. First Boston Corporation? A. No.

Q. Dean Witter & Co.?

A. I don't recall that he did.

Q. Bonbright & Co.? A. Yes.

Q. E. H. Rollins & Sons? A. Yes.

Q. H. M. Byllesby & Co.? A. I think not.

[1248]

Q. The representatives of the houses which did call on you, did they request that you assist them in getting a participation or the leadership of that syndicate?

A. Well, they called on me expecting that the Board of Directors would have something to do with the determination of the syndicate and they were endeavoring to impress on me the excellence of their firms and their ability to do a good job for the company.

Q. What did you tell them?

A. I told them that the decisions would have to be made in San Francisco, that I would be glad to relay any information that they cared to give me about their situations to Mr. Hockenbeamer and corroborate any of it that I could of my own knowl-

(Testimony of James B. Black.)

edge. That, I think, was generally the answer I gave to all of them.

Q. Do you know why the American Securities Company and Pierce Fair & Co., which firms might be said to have an interest in Pacific Gas and Electric Company financing, did not participate in the 1935 issue?

A. American Securities, I am quite sure, was out of business and I think Pierce Fair was at that time also. If they were not entirely out they were on the way out.

Q. They are no longer in business at the present time? A. No, that is correct.

Q. Do you know Mr. George Leib? [1249]

A. Yes.

Q. He is associated with the New York office of Blyth & Co., is he not? A. He is, yes.

Q. Mr. Black, I hand you what purports to be a photostatic copy of a telegram dated February 19, 1935 from George Leib to Charlie Blyth, and I will ask you to read the same.

Mr. Phleger: Wait a minute now! Oh "read" it, himself? Yes.

By Miss Calkin:

Q. Can you recall what was said at the conference between you and Mr. Leib referred to in that wire?

A. Well, I don't recall the detail of it, but it was apparently an attitude that Brown Harriman was taking with respect to their position in the under-

(Testimony of James B. Black.)

writing group which would give them the advantage over Blyth & Co. I don't recall the detail of it.

Q. I believe the evidence shows that Brown Harriman & Co., Lazard Freres & Co. and Blyth & Co. each got a 20 percent participation in the first piece of financing in 1935, with Lazard Freres having the management of the syndicate. Did you convey your ideas as related to Mr. Leib to Mr. Hockenbeamer?

A. No, I don't think so. I think I had finished talking with Mr. Hockenbeamer on that matter by February 19. I [1250] had given him my views and I might have in subsequent discussions had something to do about it, but I don't recall.

Q. Do you recall the June, 1935 issue of $30,000,000 which was sold to a syndicate also headed by Lazard Freres & Co.? A. Yes.

Q. Do you recall whether or not Blyth & Co. headed that piece of business on the West Coast?

A. There was some division between Blyth and Lazard on that issue. As I recall, it was not a joint leadership, but I think Lazard continued to lead it, but they allowed Blyth & Co. to manage the business west of the Mississippi.

Q. And gave Blyth & Co. participation in the management fee? A. I don't know that.

Q. Do you know how Blyth & Co. succeeded in improving its position in June, 1935 over its position in the March, 1935 issue?

(Testimony of James B. Black.)

A. By keeping everlastingly after Mr. Hockenbeamer, I guess.

Q. Did you intercede on behalf of Blyth & Co.?

A. No. My recommendations to Mr. Hockenbeamer were to the effect that I thought Blyth & Co. ought to head the business. I had several conversations with Mr. Hockenbeamer about that time, but I don't recall I ever got down to detail as to the division of the business or as to any question of [1251] joint management, though it is possible that we did discuss it.

Miss Calkin: Will you mark this as Commission's Exhibit 135, please?

(The document referred to was marked Commission's Exhibit No. 135 for identification.)

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 135, which purports to be a copy of a letter dated February 21, 1935 from Mr. Leib to Mr. Black, and I will ask you if you can identify that document?

A. Yes. This is a part of the campaign of Mr. Leib to improve the position of Blyth & Co. in the first underwriting group.

Q. You received the original of the letter of which that purports to be a copy?

A. I assume I did, yes.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibit 135.

A. (continuing) This contains a great many statements that I don't know to be true and also a suggestion as to the underwriting syndicate and the allocations between the different members of the group.

The Examiner: The document will be received in evidence [1252] as Commission's Exhibit No. 135.

(The document referred to was marked Commission's Exhibit No. 135 and received in evidence.)

A. (continuing) These suggestions bear very little resemblance to the final group.

By Miss Calkin:

Q. Do you recall whether or not you answered this letter?

A. No, I don't think I did. I don't think it required an answer.

Q. Were you of the opinion at approximately the date of that letter that Blyth & Co. should head the Applicant's 1935 financing?

A. I so recommended to Mr. Hockenbeamer.

Q. Do you remember when you made that recommendation? A. No, I do not.

Q. Was it prior to the March, 1935 issue?

A. Yes. It was the time that he was setting the March issue up.

(Testimony of James B. Black.)

Q. And what did Mr. Hockenbeamer say when you recommended that Blyth & Co. have the leadership of that group?

A. He was non-committal.

Q. Did you have several conversations over the telephone with Mr. Hockenbeamer regarding the leadership of the first 1935 syndicate? [1253]

A. I don't believe I had several. I told him what I thought about it. As I recall, my conversations with him on that point were very short, but I did have conversations with him on other matters relating to it, particularly the strength of the individual banking firms that he was considering including in his group.

Q. Do you ever recall having told Mr. Leib that you were mystified concerning the selection of Lazard Freres & Co. to manage the first piece of 1935 financing and the make-up of the syndicate?

A. I think that's Mr. Leib's interpretation of my statement that I didn't know the exact reasons why it was done. I think therein lies the mystery.

Q. I hand you what purports to be a copy of a telegram dated February 21, 1935 from Mr. Leib to Mr. Blyth and will ask that you attempt to read it. I call your particular attention to the next-to-the-last paragraph thereof.

A. I don't know where he got the idea that I was talking daily with Mr. Hockenbeamer, because it wasn't the fact. I might have talked daily with him for two or three days, but it certainly creates

(Testimony of James B. Black.)

an impression that I was talking with him every day for an indefinite period.

Q. What was the primary subject matter of your discussions with Mr. Hockenbeamer at this period?

A. Well, it was on the matters that I have testified [1254] to with respect to the different banking houses, their strength. And I think at that time he was beginning to think about price. He also had a good many questions to ask about the registration statement, which I presume was filed within a week after the date of this wire.

Q. Will you refer to a telegram in that book—they are arranged, chronologically—dated February 22, 1935 by Mr. Leib to Mr. Shurtleff? Do you recall having written Mr. Earl and what in substance you wrote him? A. I can't read this one.

Q. Here is one that maybe you can read.

A. I don't believe I ever wrote to Mr. Earl on that subject. I have no recollection of it if I did.

Q. You will note that in the telegram Mr. Leib makes the statement that "we", referring presumably to Blyth & Co., "have the two largest stockholdings on our side". Do you have any explanation to make of this statement?

A. Well, I think he was counting a good many chickens before they hatched. He no doubt knew of my sympathy to his cause. I don't know that I ever told him specifically that I was going to make any effort at all to assist him, but he no doubt knew and I probably did let him know at least by infer-

(Testimony of James B. Black.)

ence that I had recommended to Mr. Hockenbeamer that Blyth & Co. have the business. Now, who the other stockholder was I don't know. It might have been Standard Gas & Electric Company. [1255] They were the next largest stockholder at that time.

Q. Might that not have referred to Pacific Gas Lighting Company?

A. Pacific Lighting Corporation?

Q. Yes, Pacific Lighting Corporation.

A. They were not the next-to-the-largest stockholder at that time. It might have referred to them. He says here "Therefore, we have the two largest stockholders on our side, and also we have the right on our side".

Mr. Phleger: That ranks third after the two other stockholders!

A. (continuing) But the two largest stockholders at that time were the North American group and the Standard Gas & Electric Company.

By Miss Calkin:

Q. Did you discuss the handling of the $45,000,000 issue with any representative of Blyth & Co. after it was placed on the market? That is, the manner in which the issue was distributed and so forth?

A. I don't remember. It is quite possible.

Q. Mr. Black, I call your attention to what purports to be a copy of a letter of April 3, 1935 from Mr. Leib to Mr. Shurtleff in which he states that you were tremendously surprised that Blyth & Co.

(Testimony of James B. Black.)

did not head the business because you practically gave instructions to Mr. Hockenbeamer that you [1256] would like to have it this way.

A. Well, Mr. Leib is exuberant. I was not surprised at all because I knew that somewhere along the line that Mr. Hockenbeamer had made the decision to give the business to Lazard Freres.

Q. Would you say that that was a correct interpretation of your communication to Mr. Hockenbeamer on the subject of the leadership of the March, 1935 syndicate?

A. Well, if I wanted to do Blyth & Co. a disservice that would be the way to have done it.

Q. Did you give Mr. Hockenbeamer instructions? A. No, certainly not.

Q. Did you tell Mr. Leib that you had instructed Mr. Hockenbeamer to give his firm the leadership of the business?

A. I did not. I most certainly did not.

Q. Did you ever ask Mr. Hockenbeamer who was running the Applicant, he, Mr. Hockenbeamer, or Stanley Russell, as that letter, I believe, makes some statement to the effect?

A. I don't recall that I ever did. I am quite sure I didn't in the form that it was stated here because that isn't the way I ever talked to Mr. Hockenbeamer and I have never used statements of that kind in discussing matters with him.

Q. Did Mr. Hockenbeamer weaken his position with the North American Company by giving

(Testimony of James B. Black.)

Lazard Freres the leadership of the $45,000,000 issue? [1257]

A. I don't think so appreciably. I would not have done it that way and he knew it, but that didn't affect his relations with me in any way.

Q. Did you ever tell Mr. Leib that your mind was open as to who should head the next syndicate, which was after the March, 1935 issue?

A. Well, I don't recall any such conversation, but he might have asked me if I as a director had any objection to him continuing to persuade Mr. Hockenbeamer to put Blyth & Co. in charge of the second underwriting. And I most certainly would have told him that I had no objection, if he had asked me.

Q. Did you lead him to believe that you would participate in the selection of the next syndicate manager? A. I did not.

Q. Do you know whether or not my understanding is correct, that the next piece of Applicant's financing—that is, in June of 1935—a $30,000,000 issue, was headed on the West Coast by Blyth & Co. and on the East by Lazard Freres?

A. It is my recollection that it was headed by Lazard Freres all over the country but that Blyth had the management of it under Lazard in the territory west of the Mississippi. Now, that may not be an accurate statement, but it is my recollection of it.

(Testimony of James B. Black.)

Q. After the March issue did you again tell Mr. Hocken- [1258] beamer that you thought that Blyth & Co. would be a better house to head the Applicant's business?

A. I don't recall that I did.

Q. Do you recall having called Mr. Leib in the early part of June and asking him if his firm had obtained joint management of the June, 1935 issue?

A. I remember some time along in there talking with him. I was inquiring, I think, as to whether they were going ahead with the second issue and what the situation was with respect to the group.

Q. Do you recall whether or not at that conversation you told Mr. Leib that you had suggested to Mr. Hockenbeamer that Blyth & Co. and Lazard Freres have joint management in the country with equal participation in the management fee?

A. No, I don't recall that.

Q. Did you ever make such a suggestion to Mr. Hockenbeamer?

A. I might have made it at the time of the first underwriting.

Q. But your wishes in that respect were not followed? A. Oh, no.

Q. What were——

A. (interposing) May I amplify that a little? I am quite sure that at the time Mr. Hockenbeamer and I were discussing the leadership of the first underwriting group that he [1259] suggested alternatives to a single leadership. Perhaps I sug-

(Testimony of James B. Black.)

gested some, but whether I discussed with him a joint leadership or a divided leadership subsequent to the first issue, I don't recall.

Q. What were your activities concerning Applicant's financing from the date of the June issue to the next issue in September of 1935?

A. I don't recall any activities.

Q. Do you recall having had lunch with Mr. Leib about August 20, 1935 just before you went to California during which lunch you discussed Applicant's financing? A. No, I don't.

Q. I hand you what purports to be a photostatic copy of a letter dated August 20, 1935 from Mr. Leib to Mr. Blyth and will ask you if that refreshes your recollection?

A. I don't remember the conversation or the luncheon. I can't read this second page.

Q. Do you recall having told Mr. Leib at that time that you could not understand how Lazard Freres got the management when Blyth & Co. had so many friends in San Francisco, such as Messrs. Miller, Anderson and Chickering?

A. That's quite possible.

Q. Did you tell Mr. Leib on that occasion that neither you nor Mr. Fogarty ever told Mr. Hockenbeamer to do anything but only made suggestions, and that Mr. Hockenbeamer had always [1260] been amenable to suggestions?

A. I certainly did not. I told him probably the first part of that statement, but not the second.

(Testimony of James B. Black.)

Q. You mean that it is not true that Mr. Hockenbeamer had always been amenable to suggestions?

A. He had not. He made his own decisions.

Q. Do you recall seeing Mr. Blyth on several occasions when you were in California the latter part of August or the first part of September, 1935?

A. No. I don't recall seeing him, but I probably called on him. He was one of my acquaintances here whom I always called upon when I came to California, and I no doubt did call upon him.

Q. Will you refer to a letter in there dated September 14, 1935 from Mr. Blyth to Mr. Leib? Do you recall whether or not you discussed with Mr. Leib or Mr. Blyth in the latter part of August or the first part of September, 1935 the syndicate managership of the Applicant's future financing?

A. Well, I don't recall it.

Q. Did you have anything to do with the formation of the syndicate which purchased the $20,000,000 bond issue of September, 1935?

A. I did not.

Q. Did Mr. Hockenbeamer consult with you regarding the price and the spread on the issues sold in June and September [1261] of 1935?

A. Well, I don't recall specifically, but I presume he did. He didn't talk about spread, as I recall, after the first issue——

Q. (interposing) Mr. Black, to what extent——

A. (continuing) —or just prior to the second issue. I don't believe we discussed spread at all on

(Testimony of James B. Black.)

the last issue. This is a long time ago and there was a lot of conversation, and I don't remember all of it very accurately. He did make a practice of checking with me on price and I think that it would be safe to say that he did on all three issues.

Q. In connection with any of the 1935 issues did you carry on any negotiations with Stanley Russell?

A. None whatsoever.

Q. To what extent did you participate in any of the negotiations between the Applicant and the underwriters with respect to the 1935 issues?

A. I didn't participate at all. The negotiations were all conducted out here.

Q. And you were not present during those negotiations? A. None of them.

Q. Do you know whether any representatives of the North American Company participated in the negotiations respecting the 1935 bond issues?

A. No. I am quite sure they did not. [1262]

Q. Before you left New York after your election as president of the Applicant what, if any, discussions did you have with Mr. Fogarty or Mr. Williams regarding future financing by the Applicant and who should head it?

A. I had none whatsoever with either one.

Q. You were then well aware of the desire of Blyth & Co. to get the leadership of Applicant's business, were you not? A. Yes. Oh, yes.

Q. Did you ever request Mr. Fogarty or Mr.

(Testimony of James B. Black.)

Williams for their views on the desirability of having Blyth & Co. head the Applicant's financing?

A. I have no recollection of ever discussing it with Mr. Williams. I might have discussed it with Mr. Fogarty.

Q. Did you know before you left New York to become president of the Applicant what Mr. Fogarty's views were on who should head Applicant's financing?

A. I don't believe he ever expressed any views to me.

Q. Did any representative of the North American Company ever give you the impression that they were more favorable to Blyth & Co. than they were to Lazard Freres & Co. as respected the leadership of Applicant's financing?

A. They did not.

Q. What conversations, if any, did you have with Mr. Fogarty or Mr. Freeman or any representatives of the North [1263] American Company respecting the leadership of Applicant's financing prior to the March, 1936 issues?

A. I had none.

Q. Who formulated the plan of refinancing which was consummated in March, 1936?

A. That was formulated in my office.

Q. Did you confer with North American Company representatives regarding the plan?

A. I did not.

(Testimony of James B. Black.)

Q. What was the nature of your first communication with the North American people in regard to the first 1936 issue?

A. Well, I don't remember it specifically, but I am sure that I didn't talk with them until we had made the decision to proceed and that I was looking for information on price and their judgment on what the market was going to look like 30 or 60 days hence.

Q. You did talk to Mr. Fogarty to get his ideas on price? A. Oh, yes.

Q. What about the spread?

A. No, not on the spread.

Q. Who determined the spread on that issue?

A. I did.

Q. After you became president who first talked to you about the syndicate management of Applicant's next financing? [1264]

A. I think the first and only discussion that I had with anyone about it was a remark that Mr. Allen Chickering, one of our directors, made at luncheon one noon. Mr. Chickering had been an advocate of Blyth & Co. leading the business and he told me that he thought that it had been a mistake not to have given them the lead in 1935 and that he hoped that when the time came for doing any further financing that they would be chosen for the leadership. And that was, I think, some time in December, and only a few days—not to exceed two or three weeks in any event—after I had come

(Testimony of James B. Black.)

to San Francisco and I told him that I had a lot more troubles to straighten out before we got to that point and that I didn't want to even think about it.

Q. Did Mr. Chickering express dissatisfaction over the leadership of Lazard Freres & Co.?

A. Well, he expressed a genuine dissatisfaction with the situation as it existed in 1936. I don't know that it was because he thought less of Lazard Freres than he thought more of Blyth & Co.

The Examiner: You said the situation in " '36". Do you mean '35?

The Witness: In 1935. I beg your pardon.

By Miss Calkin:

Q. But he did indicate to you that he would like to see Blyth & Co. head the business? [1265]

A. He did, yes. And I don't believe I had any further conversation with anyone about it except perhaps Mr. Beckett until I made up my mind what I wanted to do, and then I discussed it with the members of the Executive Committee and, I think, perhaps with some of the members of the Board. And they approved heartily. Then I called Mr. Blyth in. Previously he had never mentioned the matter to me, and I called him down to my office and asked him if he was in a position to take the lead of the business. He said he was and would be very happy to do it. I told him to get busy with some suggestions as to the group; told him generally what I had in mind with respect to size and term

(Testimony of James B. Black.)

of the bond, the coupon; and asked him to have his people who were familiar with the preparation of registration statements get in touch with our people right away.

Q. But that was after you suggested the name of Blyth & Co. as leaders to the Board?

A. Yes.

Q. Was your mind made up as early as December, 1935, that the leadership of the next financing would not go to Lazard Freres & Co.?

A. No. I don't think I had that question in my mind at all. I had so many other things to think about, as I told Mr. Chickering, that I don't believe I would attempt to come to any decision on it. [1266]

Q. Do you recall having lunch with Mr. Blyth during the early part of 1936? A. No.

Q. I refer you to a letter dated January 4, 1936 from Mr. Blyth to Mr. Mitchell and call your attention to the last paragraph on the first page of that letter. Would you say that your mind, if you had such a luncheon, the luncheon that was then contemplated with Mr. Blyth, was or was not made up as of approximately that date as to whether or not Blyth & Co. should lead the next underwriting of the Applicant?

A. I am sure I can't say just what day it was made up—the decision was finally arrived at—but I think this would be a bit early.

Q. Is Mr. Chickering the only member of Ap-

(Testimony of James B. Black.)

plicant's Board that ever suggested to you that Blyth & Co. head the business?

A. Yes. My answer to the previous question would be confirmed by the fact that I did not tell Blyth at the time of this luncheon, if we had it, that he was to head the business because I remember distinctly calling him into my office when I told him, and it must have been subsequent to this date.

Q. Did any members of the Executive Committee or the Board express their disapproval over Blyth & Co. at the time that you did make it? [1267]

A. No. On the contrary, they approved heartily.

Miss Calkin: I think this is a good stopping point.

Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: Mr. Troy, you heard the statement that was just made, did you not: That the cross examination of Miss Calkin will conclude in perhaps 30 minutes in the morning?

Mr. Troy: No, I didn't hear it.

The Examiner: If you have any questions that you desire to propound to Mr. Black will you be prepared to do so in the morning?

Mr. Troy: Yes, and I am going to try to get here at 9:00 o'clock to confer with Miss Calkin. She fixed that time.

The Examiner: Yes. We will recess until 10:00 o'clock.

(Testimony of James B. Black.)

(Whereupon at 4:20 o'clock p. m. an adjournment was taken to 10:00 o'clock a. m. on Tuesday, November 26, 1940.) [1268]

Proceedings

The Examiner: You may proceed when you are ready.

Whereupon—

JAMES B. BLACK

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination
(Resumed)

By Miss Calkin:

Q. I believe you testified, Mr. Black, that no member of the Board, or of the Executive Committee, other than Mr. Chickering, requested you to let Blyth & Co. have the leadership of the syndicate which purchased the bonds issued by the Applicant in the spring of 1936?

A. That is correct. But I don't know that you would call Mr. Chickering's remarks as a request. They were more in the nature of an expression of his opinion.

Q. He has testified to the conversation he had with you?

(Testimony of James B. Black.)

A. Yes. But I took it as just an expression of opinion.

Q. I believe you testified that Mr. Blyth never requested you to handle the business?

A. No, he did not. I imagine that he was under some embarrassment from an ethical standpoint.

[1270]

Q. What about other representatives of that firm, did they approach you, that is, after you came to San Francisco? A. No.

Q. Just who did you talk to of the New York office of Blyth & Co. at different periods of time regarding Blyth & Co.'s desire to head the Pacific Gas and Electric Company business?

A. I don't believe I talked with anyone except Mr. Leib.

Q. You never talked to Mr. Mitchell about it?

A. No.

Q. Was Mr. Mitchell with Blyth & Co. when you left New York?

A. I think he came some time in 1935, but I wouldn't be sure of that.

Q. Now, did Mr. Williams ever talk to you or communicate with you in any manner regarding a conference which he had with Mr. Mitchell in the early part of January 1936? A. He never did.

Q. Did Mr. Williams ever express to you his opinion as to who should head the Applicant's financing? A. He did not.

Q. Have you ever discussed the leadership of

(Testimony of James B. Black.)

Applicant's financing from any standpoint with Mr. Williams?

A. I certainly have not since I was elected president. He may have known of my feeling that Blyth should have headed the business in 1936. I don't recall—— [1271]

Q. (interposing) You mean 1935?

A. Yes—I don't recall any specific conversation, but I presume it was generally known around the office there how I felt about it.

Q. But there was no understanding between you and Mr. Fogarty or Mr. Williams, when you left New York to become president of the Applicant, as to who should head any future financing by the Applicant, or who should be members of the syndicate?

A. No understanding on that or any other thing.

Q. Would you say that your only knowledge as to the desire on the part of Blyth & Co. to get the leadership of this business came from your conversations with Mr. Leib?

A. I would assume that all of the banking houses in the group, any one of them would want to head the business. Of course, I knew from the conversations with Mr. Leib that they wanted to head it.

Q. Did the representatives of any New York house, banking house, during the period you were in New York and before you came to the Coast as president of the Applicant, see you as frequently as Mr. Leib?

(Testimony of James B. Black.)

A. Yes, I think so. I didn't see Mr. Leib very often. With the exception of the period that he was trying to get Blyth the leadership of the business I saw very little of him.

Q. What individuals would you say were as active as [1272] the representatives of Blyth & Co. were?

A. None of them. But I did have requests from others for my assistance in convincing Mr. Hockenbeamer that their firm should be given either leadership or a very high position in the syndicate.

Q. But after the syndicate was formed in March of 1935 did the representatives of any of the houses continue to see you in an effort to get the leadership of the next piece of Applicant's financing?

A. I don't recall that they did.

Q. I may have asked you this yesterday, but did you ever discuss the change of leadership from Blyth & Co. to Lazard Freres & Co. with Mr. Fogarty before you had made up your mind on that change?

A. No. I didn't discuss it with anyone.

Q. Do you assume full responsibility for the change in the leadership, Mr. Blyth? A. I do.

Q. How was the list of underwriters for the March or April 1936 issue made up, that is, the syndicate membership?

A. That came out of conversations between Mr. Blyth and myself. I asked him for his recommendations, and I had some of my own ideas as to

(Testimony of James B. Black.)

changes in allocations, and I can't say just whether all of mine were adopted, or whether all of his were adopted. There was, as a matter of fact, very little [1273] difference between us as to the form that the group should take.

Q. Who originally suggested the name of Dillon Read & Co.?

A. I don't recall as to that. It came out of the conversation which I had with Mr. Blyth with respect to the desirability of having additional strength in the group, and several houses were mentioned. I imagine half a dozen were mentioned. Whether I mentioned Dillon Read & Co., or whether he did, or whether he mentioned Morgan Stanley & Co. or not, I don't recall. But it is quite obvious that in choosing a firm, or two or three to add to he group that those firms that weren't finally chosen would be considered by anyone who was considering the problem.

Q. Would you say the same was true with respect to the selection of Kuhn, Loeb & Co.?

A. Yes.

Q. It is a fact, is it not, Mr. Black, that Dillon Read & Co. have for a number of years headed a large number of the issues of the North American Company and its subsidiaries?

A. They have been very active in financing of North American properties. I don't recall just the proportion that they have handled. North American, I think, employs other banking groups.

(Testimony of James B. Black.)

Q. Have you not heard Dillon Read & Co. referred to [1274] as the banking house for the North American system?

A. Not around the North American offices. I have heard it outside.

Q. Were you acquainted with the fact that Harrison Williams and Clarence Dillon were close personal friends?

A. I knew they were friends, as I think Mr. Williams knows and is friendly with practically all the investment bankers and commercial bankers in New York.

Q. Did Mr. Williams suggest that the firm of Dillon Read & Co. be given a substantial participating in the $90,000,000 issue?

A. He did not.

Q. Did you discuss the inclusion of the firm of Dillon Read & Co. with any representatives of the North American Company? A. I did not.

Q. Who suggested that Lazard Freres & Co. have only fifth position in the $90,000,000 issue with a 6.67 percent participation?

A. Well, they were really in third position. There were three houses in the second position—Blyth headed it—and then Lazard shared the third position with, I think, one other house. I haven't those lists before me. But I can't say that I did or that Mr. Blyth did suggest just where they should be. It was the outcome of the result of cut and tries, [1275] suggestions that we both made during the

(Testimony of James B. Black.)

course of the conversation. He had several tentative setups and I had several, and we finally got together on the one that was finally adopted. Just where in the conversation the idea came to include any one of them any place I can't tell you because there were several conversations on it and several memorandums submitted by each of us.

Q. Who formulated the plan for the March or April 1936 financing? A. I did.

Q. Who carried on the negotiations with respect to price, spread, type of security to be issued and debenture provisions, and matters of that sort?

A. Entirely handled by Mr. Blyth and myself.

Q. Those were all handled in San Francisco?

A. In San Francisco; yes.

Q. To what extent did you communicate with the North American people in regard to this piece of financing?

A. Only with respect to price and factors that would relate to price.

Q. Did you talk to Mr. Russell regarding the change of leadership prior to the signing of the underwriters' agreement?

A. Yes. Mr. Russell came to my office in San Francisco and I had the very unpleasant task of telling him that I had [1276] decided to make the change.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 136, which purports to be a copy of a telegram

(Testimony of James B. Black.)

dated February 27, 1936, from yourself to Mr. Russell. Can you identify that document?

A. Yes; I can identify that.

Miss Calkin: We offer in evidence Commission's Exhibit No. 136.

The Examiner: It will be received in evidence and so marked.

(The copy of telegram referred to was marked Commission's Exhibit No. 136 and received in evidence.)

By Miss Calkin:

Q. Did you have the conference with Mr. Russell that you have just testified to subsequent to the date of that telegram or prior thereto?

A. It must have been prior thereto. I don't recall the exact date. He was in San Francisco shortly after the first of the year. This is dated February 27, and is addressed by me to New York City; so it must have been after he returned to New York.

Q. And the conversation referred to therein was a telephone conversation?

A. I presume so, because he was in New York and I was in San Francisco, and it refers to a conversation of "yesterday". [1277]

Q. I notice that H. M. Byllesby & Co. did not participate. Why was that house left out?

A. I didn't know they were left out.

Mr. Phleger: They were in for $4,000,000.

A. (continuing) They participated in all three, I think.

(Testimony of James B. Black.)

Mr. Gerdes: They were in all three of that year.

A. (continuing) I think you will find that all houses that participated in the 1935 underwriting were in the 1936 underwriting and, in addition, in connection with the $90,000,000 issue there were three New York houses added on that issue alone and, in addition, for all three of the 1936 issues I added the six San Francisco houses.

By Miss Calkin:

Q. Did any representative of the North American Company act for the Applicant in any of the negotiations connected with the $90,000,000 issue?

A. Not at all.

Q. Was there any understanding between the Applicant and the underwriting syndicate for the $90,000,000 issue as to whether or not Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. would participate in future financing of the Applicant?

A. Well, I don't know what agreements might have been had between the underwriters, but I know there was a very [1278] definite understanding between Mr. Blyth and myself that they would not participate.

Q. In other words, their position in the March or April 1936 issue was not to be taken as establishing a precedent?

A. That is correct; and they were so informed at the time they were invited into the syndicate, I am quite certain, because I was careful to make it clear

(Testimony of James B. Black.)

to Mr. Blyth that I could see no reason why we should include them in any subsequent financing as then contemplated. It is possible that if we had a very large issue that we might give consideration to including one or all of them again.

Q. I believe those houses were not included in the two subsequent issues of the Applicant in 1936, that is, a $30,000,000 issue in May and a $35,000,000 issue in October? A. That is correct.

Q. And why were they not included?

A. Because the issues were not large enough to justify the group.

Q. Who determined that the Applicant should issue $30,000,000 principal amount of bonds in May 1936 and $35,000,000 in October of that year?

A. I did; that is, I recommended it to the Board and the Board finally approved it.

Q. Did you confer with any representatives of the [1279] North American Company about price, spread and other terms relative to the issuance of those securities? A. Price only.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 137, which purports to be a copy of a letter dated May 5, 1936, from yourself to Mr. Fogarty, and I will ask you if you can identify that document? A. Yes; I can identify it.

Miss Calkin: We offer in evidence Commission's Exhibit No. 137.

(Testimony of James B. Black.)

The Examiner: It will be received and so marked.

(The copy of letter referred to was marked Commission's Exhibit No. 137 and received in evidence.)

By Miss Calkin:

Q. Who determined the leadership and membership of the syndicates which purchased the $30,000,000 and the $35,000,000 issues of 1936?

A. I did, in conference with Mr. Blyth. They were substantially the same as the $90,000,000 issue with the exception of the three New York houses that were brought in for that issue specifically.

Q. Did all of the directors express complete satisfaction with Blyth & Co.'s management of the financing of the Applicant in 1936? [1280]

A. I can't say that they all individually expressed it, but there certainly was no criticism of it, and they all seemed to be very much pleased with it.

Q. Did any representatives of the North American Company protest over the exclusion of Dillon Read & Co. from the last two syndicates formed in 1936? A. Not to me.

Q. Did Dillon Read & Co. make any request for participation in these two issues?

A. I don't believe they made any request to participate in any of them; any of the 1936 issues.

Q. Did you consult with Messrs. Fogarty, Freeman or Williams regarding the advisability of the

(Testimony of James B. Black.)

private placement of $15,000,000 principal amount of bonds sold to the five insurance companies and a bank in February of 1938? A. No.

Q. When were they first advised of this piece of financing?

A. I don't recall specifically, but I certainly talked with Mr. Fogarty to get his advice as to the discount that he thought we would have to give the insurance companies and the bank that participated in the purchasing group below the market price for the bonds in order to interest them.

Q. Who determined that this financing should be done by a private placement? [1281]

A. I recommended it to the Board and the Board approved it, that is, the Board or the Executive Committee, or perhaps both.

Q. I believe the previous evidence shows that all of the Applicant's outstanding bonds are secured by the same trust indenture, is that correct?

A. Yes. We have assumed something just under $9,000,000 of San Joaquin Light & Power Corporation bonds, which are a separate indenture, but with that exception all of our bonds are refunding mortgage bonds.

Q. Who is the trustee under that indenture?

A. The San Francisco trustee is the American Trust Company and the New York trustee is the City Bank-Farmers.

Q. When were those trustees selected?

A. I think those two institutions, or their prede-

(Testimony of James B. Black.)

cessors, have been trustees since the mortgage was drawn.

Q. That is a 1920 indenture?

A. Yes; about 20 years.

Q. So during your presidency there has never been up for determination who should serve as trustee for any of the Applicant's issues?

A. No.

Q. Have you conferred with any North American representatives regarding future refunding or financing of the Applicant? [1282] A. No.

Q. Do you look to the North American Company for the formulation of Applicant's financial policy?

A. No, I do not look to the North American Company, except what constructive suggestions they might wish to give me. By North American Company I again refer to the directors of the Pacific Gas and Electric Company who are officers of the North American Company.

Q. During your presidency has the North American Company generally been advised of proposed financial matters before they have been acted upon by the Board? A. They have not.

Q. In connection with the major refunding programs, those matters are discussed informally before they are approved by the Board, are they not?

A. Oh, yes. We are working on those plans more or less continuously and we may be approaching a period when we can do another one, and we have

(Testimony of James B. Black.)

had several informal discussions in the Executive Committee with respect to it.

Q. To what extent has North American been advised of those informal discussions?

A. They haven't been advised at all.

Q. Would it be fair to say that North American is not consulted with reference to financing projects of the Applicant until they have reached a fairly definite stage? [1283]

A. It would be accurate to say that they are not consulted in the formulating of any of our financial plans.

Q. And you have never requested Mr. Fogarty's advice in regard to any matters pertaining to Applicant's financing, other than the price of the issues?

A. The price and, well, collateral factors which might have an effect on price, such as the term or the coupon, or something of that kind.

Q. Have you in all instances followed Mr. Fogarty's advice on those matters?

A. I don't believe his ideas have been very much different than mine. I can't say that I followed his advice at all.

Miss Calkin: I think that is all.

Mr. Phleger: I want to ask a few questions.

Redirect Examination

By Mr. Phleger:

Q. You have been asked in various forms and in various ways about communications had by you

(Testimony of James B. Black.)

with officers of the North American who are directors of the P. G. & E. in connection with financing, and two or three times you have been asked whether or not you sought the advice of Mr. Fogarty. Would it be fair to say what you were seeking was not the advice of Mr. Fogarty so much as information as to what was the existing status with respect to interest rates, markets, and [1284] so forth in New York?

A. And what might be the status in the future in his judgment. My use of the word "advice" would be almost synonymous with "information".

Q. Did you know Mr. George Leib before you went to New York?

A. Slightly. He was a business acquaintance. I had known him in San Francisco. I had never had any business with him.

Q. But you had known him in San Francisco before you went to New York? A. Yes.

Q. And before he went on to New York?

A. Yes. He came to New York after I did.

Q. Mr. Black, did the officers of the North American Company, who are directors of the Pacific Gas and Electric Company, receive any more information than they would receive if they attended meetings of the Board of Directors and of the Executive Committee?

A. No; they receive less.

Q. I take it that "less" means that they don't have knowledge of the intimate discussions that go on when those bodies actually meet?

(Testimony of James B. Black.)

A. That is correct. My feeling of obligation to those directors is that I should keep them informed on what, in my [1285] judgment, are important matters, and I have no feeling that it is necessary for me to keep them informed on other matters, detail of the operations which are discussed in the Executive Committee and Board meetings from time to time.

Q. In other words, is it fair to say that your attitude is that you try and keep them, by reports or otherwise, informed to the same extent, consideration being had as to distance and so forth, as they would have had had they actually attended the meetings of the Board?

A. Well, only as to important matters. I don't attempt to go into great detail with them.

Q. But what I am referring to, do they get copies of minutes of the meetings, and do they get the reports submitted to those meetings?

A. Yes.

Q. If there is anything else of vital importance that comes before the meetings you see that they are advised?

A. I try to; and if there is some matter developing on the outside, for instance, involving litigation, or matters in relation to rates involving large rate revisions, or relations with regulatory bodies, I try to make it a point of telling them about it, or writing them about it—usually telling them—and I feel that if I give them complete information through

(Testimony of James B. Black.)

reports, or verbally, on all important matters then they are in a position to appear out here and [1286] express their opinions on matters, if they care to, and that I have discharged my obligation to them.

Q. In effect, the officers of the North American Company who are directors of the Pacific Gas and Electric Company do not receive any more, if as much, information as received by the numerous members of your own Executive Committee?

A. That is correct.

Q. Do the officers of the North American who are representatives of the Pacific Gas and Electric Company receive any more information regarding Pacific Gas and Electric Company affairs since you became president than they received before you became president?

A. I should say that they receive just about the same information on important matters now that they received over the past ten years.

Q. And do the officers of the North American Company who are directors of the P. G. & E. receive any more or less information in respect to Pacific Gas and Electric Company affairs than they received during the time that Mr. Earl was a director and a member of the Executive Committee?

A. Not on important matters.

Q. After North American sold its interests in the Great Western and San Joaquin to the Pacific Gas and Electric Company in 1930, did it immediately cease to perform all of the [1287] various

(Testimony of James B. Black.)

supervisory and advisory functions and services which it had previously performed for the Great Western and San Joaquin, including financial, rate matters, accounting, Station Advisory Committee, engineering, purchasing, taxation, insurance, sales promotion, fiscal service and budgetary advice?

A. I did. [1288]

Mr. Phleger: Miss Calkin, for the record, have you or other representatives of the Securities and Exchange Commission been given full access to the files of the North American Company and the Pacific Gas and Electric Company with respect to matters bearing upon the issues in this proceeding?

Miss Calkin: So far as my personal investigation is concerned I was only in the office of the North American Company, and I requested all files in connection with the correspondence and any type of communication between the Applicant and the North American Company, and so far as I know they gave me all the files.

I did not make the investigation out here, but I understand the same request was made here and as far as I know the request was complied with.

Mr. Phleger: And the material resulting from the inquiry at the offices of the P. G. & E. were made available to you, were they not?

Miss Calkin: That is correct.

Mr. Phleger: Is it fair to say that all of the results of those two investigations which you felt

(Testimony of James B. Black.)

were material to the issues in this proceeding have been introduced in evidence?

Miss Calkin: That is correct.

Mr. Phleger: That is all. [1289]

Miss Calkin: I have a few further questions.

Recross Examination

By Miss Calkin:

Q. Mr. Black, would you expect the North American Company to become more active in the affairs of the Applicant than it has been in the past if the Applicant got into unforeseen difficulties?

A. I doubt it. I think that any difficulties that the Company might get into would be related to purely local matters, and I don't believe that the activity of our New York directors, and their judgment, would be very useful in matters of that kind, and I think they would so recognize it.

Q. Hasn't Mr. Fogarty ever told you in substance that one reason that neither he or Mr. Freeman attended Board meetings was because the Applicant was progressing as well as they could expect under the circumstances?

A. No. He has never told me anything about the reasons why he doesn't attend Board meetings.

Q. Has he ever indicated to you what the activity of himself and Mr. Freeman, or of the North American Company, might be in the event of a downward trend in the earnings of the Applicant?

A. He has not. [1290]

(Testimony of James B. Black.)

Q. Is it a correct statement to say that the North American Company, from 1930 until the death of Mr. Earl, paid him the salary which you testified to on direct examination to keep the North American Company informed as to the business of the Applicant? A. That is correct.

Mr. Phleger: On that subject I believe you also testified that that was largely in the nature of a pension.

The Witness: I don't think I quite used the word.

The Examiner: I think one of the other witnesses used that word.

The Witness: But his employment grew out of a situation which developed as a result of the sale of properties. He has been employed by the Great Western Power Company since its inception, and the last six years as president, and there seemed to be no place for him in the Pacific Gas and Electric Company organization, and the North American people, being new in the Pacific Gas and Electric Company situation, felt justified in employing him at least for a few years for the purpose of keeping them informed with respect to considerable detail which they might not otherwise get. The value of that detail might be subject to some question.

By Miss Calkin:

Q. Do you know whether or not since Mr. Earl's death, the North American Company has paid anyone, either employees [1291] of the Applicant or

(Testimony of James B. Black.)

anyone else, to furnish it information regarding the Applicant? A. Not to my knowledge.

Q. Mr. Black, to what extent have you discussed the application which is the basis for this hearing with representatives of the North American Company?

A. Well, the application was filed in December of 1935 and I don't believe that there was any discussion with the North American Company organization about it, except perhaps with respect to obtaining the necessary information for preparing the application. As a matter of fact, the application was pretty well prepared before I came out here.

Q. Was it prepared in the offices of the——

A. (interposing) Of the Pacific Gas and Electric Company; yes.

Q. What discussions have you had with North American representatives regarding this hearing?

A. I don't recall any.

Q. You haven't talked with Mr. Fogarty over the telephone regarding who the witnesses would be in the proceeding? A. Oh, no.

Q. Or on any other matters? [1292]

A. I think the last time I talked with Mr. Fogarty was in July and, as I recall, my purpose in calling him was to acquaint him with the status of our negotiations in the San Francisco situation growing out of this Hetch Hetchy litigation. I don't know when I have talked to Mr. Freeman over the telephone. It has been so long I have forgotten.

(Testimony of James B. Black.)

Q. Have you had any correspondence with Mr. Fogarty regarding this proceeding?

A. No; nor with Mr. Freeman.

Q. Did you recommend men to fill the vacancies on Applicant's Board which have risen since you were president of the Applicant without any contacts with Mr. Fogarty or Mr. Freeman?

A. I did.

Q. On direct examination I believe you testified that you would oppose any attempt on the part of the North American Company to control or exercise a controlling influence over the management or policies of the Applicant. Why would you oppose such an attempt?

A. I think it would be very detrimental to the company, Pacific Gas and Electric Company, if there was any such attempt made, and certainly it would be detrimental if it was successful, which I don't for a moment believe that it would be. I think the reason that I gave at that time covered [1293] the matter; that is, that this is known as the local company, that there is a good deal of local pride in it, and if it became known that it was a company controlled by outside interests, and particularly by a New York holding company, I am sure its position in public esteem would be weakened, and I am sure it would be subject to some political criticism, and they might or might not be serious, but at least they would be harmful; and I think that any attempt to interfere in the operations of the property by

(Testimony of James B. Black.)

anyone who was not here constantly on top of the job would result in inefficiency and loss of morale and would have a generally bad effect.

Q. Mr. Black, do you feel that in your position as president of the Applicant you are in a position to deal at arm's length with the firm of Blyth & Co.?

A. I am in a position to deal at arm's length with any individual or any firm.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: Miss Calkin, have you conferred with Mr. Troy with respect to his participation?

Miss Calkin: Yes. I talked to him about it. He has some questions, I think, and he might as well ask them.

The Examiner: Mr. Troy, you have been following these proceedings this morning as you have in the past? [1294]

Mr. Troy: Yes.

The Examiner: The examination of Mr. Black is now concluded, do you have any questions that you desire to propound to Mr. Black?

Mr. Troy: I haven't been able to hear the questions or the answers. I am quite deaf. I know Mr. Black will pardon me if I ask him to raise his voice so I can hear him in replying. I didn't hear any question or answer.

The Examiner: You have discussed the subject of this proceeding with Miss Calkin, I believe?

(Testimony of James B. Black.)

Mr. Troy: Yes.

The Examiner: You understand what the issues are that are involved here?

Mr. Troy: Yes—I think I do. I might be mistaken.

The Examiner: Proceed with your questions.

Mr. Troy: I think that, to begin with, I should congratulate Mr. Black on the attorneys that he has. They are very excellent gentlemen, able and efficient.

As far as I can see, excepting in your case and except in cross examination, they have done most of the testifying here. All the witnesses had to do was to say "yes" or "no" as a result.

Of course, I am not a lawyer, and I always thought that a proper method of testifying was for the witness to do the testifying. This is the first time that—no, it is not [1295] the first time—I remember in the other case of the Pacific Gas and Electric Company before the Railroad Commission, the gas case in 1933 and 1934, that Attorney Olney did most of the testifying in his questioning of the witnesses.

Cross Examination

By Mr. Troy:

Q. Mr. Black, Mr. Foote in his testimony stated that yourself and the other directors who were the proxies, received the proxies of most of the stockholders, but a few of the larger stockholders attended annual meetings in person, is that correct?

A. I think not.

(Testimony of James B. Black.)

Q. How? A. No.

Q. In what respect is it incorrect? That is, I mean, Mr. Foote's statement you say is not correct?

A. No. Your statement is not correct.

Q. Mine is not correct?

A. We sent out proxy notices to all of our stockholders.

Q. Yes.

A. During the recent years there have been, I should say, an average of 64 to 65 per cent of our stock come in with proxies.

Q. Yes. [1296]

A. And we have at our stockholders' meeting, I should say, over——

Q. (interposing) What?

A. (continuing) We have at our stockholders' meeting, I should say, over 100 stockholders usually and they are almost entirely small stockholders.

Q. Small stockholders. A. Yes.

Q. Mr. Foote said just the other way.

A. I think not.

Mr. Troy: If you will look up the transcript you will find it.

The Examiner: The record will show what was said, Mr. Troy.

Mr. Troy: The report—this goes as to the control of the P. G. & E. by the North American Company.

The Examiner: I understand.

Mr. Troy: It was always recognized that a concern, to control a company, it does not have to have

(Testimony of James B. Black.)

the majority of the stock. That fact was recognized in connection with the Southern Pacific, that is, that 25 per cent of the stock was sufficient to control, and much less.

Mr. Phleger: Are you arguing this case or are you introducing evidence?

Mr. Troy: I am just following your good example. You [1297] are such an experienced and able lawyer that I would like to follow your example.

Mr. Phleger: I think you are not going to be able to do it.

Mr. Troy: I have had no experience, and I don't know anything about it.

Mr. Phleger: I suggest——

The Examiner: I understood that you at one time were an attorney, were you not?

Mr. Troy: No.

The Examiner: I was misinformed.

Mr. Troy: I have been writing chiefly on public ownership, in favor of public ownership, and criticising public utility corporations and economic questions and tax questions.

The Examiner: All right.

Mr. Troy: As I have said before, I collected a lot of data on those subjects. I have my room full of it.

The Examiner: Go ahead with your questioning.

Mr. Troy: How?

The Examiner: Proceed with your questioning.

By Mr. Troy:

Q. Now, this account of the twenty largest stock-

(Testimony of James B. Black.)

holders in your report for the year ending December 31, 1939, shows that all of them, except the Pacific Lighting [1298] Corporation, are foreign corporations and persons, isn't that correct?

Mr. Phleger: Will you read the question?

(The question referred to was read by the reporter as above recorded.)

Miss Calkin: I think the record should show that the report he refers to is the report of the company to the Railroad Commission of California.

A. The report gives the address of the security holder. There is no information here as to where the corporations were incorporated or domiciled.

By Mr. Troy:

Q. You know those corporations, don't you, as president of the company?

A. I know some of them.

Q. Do you know they are foreign corporations?

A. I don't know that any of them are incorporated in California, except the Pacific Lighting Corporation.

Q. So the others are all foreign corporations?

A. I don't know.

Q. Did they send you their proxy, or did they give it through the North American Company?

A. All of the proxies come to the Pacific Gas.

Q. And do you know what interest the North American Company has in any of these corporations? [1299]

A. I think Noxid & Company is a nominee of

(Testimony of James B. Black.)

the North American Utilities Securities Company. They own 56,900 shares and, as far as I know, the North American Company has no interest in any other companies.

Q. It has no stock in the Standard Gas & Electric Company? A. None that I know of.

Q. Or the Sun Life Assurance Company of Canada? A. None that I know of.

Q. Or the American Superpower Corporation and New England Trust Company?

A. Same answer.

Q. And the American Cities Power & Light Corporation? A. Same answer.

Q. And, of course, the G. E. Employees. The Illuminating & Power Securities Corporation, do they have any stock in that?

A. Not that I know of.

Q. But these are eastern corporations—the Travelers Insurance Company, has it any stock in that?

A. None that I know of.

Q. And these twenty largest stockholders have a total of 3,182,000, and at the meeting the total vote cast—you say there are how many shares—11,632,000 is the total number of votes or shares of stock of the company? [1300]

A. That is correct.

Q. And the total vote cast was 7,551,558 and by proxy it was 7,539,394, so it was a fact that only about a little over 12,000 votes were cast directly by the stockholders? A. That is correct.

(Testimony of James B. Black.)

Q. So Mr.—your treasurer's statement was incorrect?

A. I think your statement is incorrect.

Q. You look up the transcript.

The Examiner: Someone will.

By Mr. Troy:

Q. This (indicating) is the 1938 report that you filed with the Railroad Commission, the Pacific Gas and Electric Company, and it likewise gives the number of shares. Now, the North American Company had 2,002,570 shares, all common stock, and at the annual meeting there was 7,420,000 votes cast. At both those meetings it was approximately the same. The twenty largest stockholders very easily controlled the Pacific Gas and Electric Company.

Mr. Phleger: I object to the question, if it is a question.

The Examiner: There is an objection to your question. It has not yet been ruled on.

Mr. Troy: I didn't hear it. Throw a paper or a book [1301] at me.

Mr. Phleger: Well, counsel has added up the number of shares held by the twenty largest stockholders and has attempted to relate it to the number of votes cast at the 1938 annual meeting. I see no relation between the two, unless it is shown that all of those stockholders were present at that meeting. If he wants to ask whether or not he believes that the twenty largest shareholders can control the

(Testimony of James B. Black.)

company, that is one thing; but I don't think his question is framed——

The Examiner: I think his question is likewise objectionable as calling for a conclusion.

Mr. Troy: Pardon?

The Examiner: I think your question is objectionable on the grounds stated, and possibly because it also calls for a conclusion.

Do you expect an answer to it from Mr. Black?

Mr. Troy: Yes.

The Examiner: Or is it just an assertion on your part?

Mr. Troy: I want an answer.

The Examiner: Will you reframe your question, please?

Mr. Troy: Would the reporter please read it?

(The question or statement referred to was read by the reporter as above recorded.)

Mr. Troy: Approximately one-half of the shares voted [1302] at the meeting.

The Examiner : That is your conclusion.

The objection to your question has been sustained.

Mr. Troy: It seems to be a self-evident fact.

The Examiner: That is your opinion, isn't it?

Mr. Troy: Well, it is self-evident.

I am asking Mr. Black if they didn't control that vote, that meeting.

The Examiner: You have changed the question from did they control that meeting to is it possible that they could have, is that right?

(Testimony of James B. Black.)

Mr. Troy: All right, if you wish.

The Examiner: All right, Mr. Black.

The Witness: I am not sure what the question is. Is it, did they control the meeting?

The Examiner: Is it possible that they could. He changed his question to read is it possible for the twenty largest stockholders to control the meeting if all were present and voting in person or by proxy.

Mr. Phleger: It just doesn't make sense, because the testimony shows that with the exception of 20,000 votes that were present in person, all of the stockholders, other stockholders, were present by proxy, and the proxy ran to Mr. Black, Mr. Downing and Mr. Foote.

The Examiner: It is apparent it is a hypothetical [1303] question, because there is no testimony here, nor has he shown facts to show whether or not, or which of the stockholders did vote. The record shows, I don't know what 1938 shows, but for 1939 there was about 65 per cent attendance. Now, it is possible that some of those first twenty largest stockholders were not represented in that 65 per cent, so it is purely a hypothetical question.

Mr. Phleger: It further is meaningless because the 66 per cent who were present, with the exception of 20,000 shares, were represented by Mr. Black, Mr. Downing and Mr. Foote. So how could those who were present in the person of the executives of the company control the meeting?

The Witness: They couldn't control it anyhow,

(Testimony of James B. Black.)

because there were 7400 odd shares voted, and the first twenty largest stockholders only have 40 per cent of that. It is mathematically impossible.

By Mr. Troy:

Q. As I said before, it has always been recognized that it doesn't require a majority to control.

A. It does in a meeting.

Q. That is sufficient on that. No use taking up your time.

The Examiner: Go ahead with your next question.

Mr. Troy: What?

The Examiner: Go ahead with your next question.

[1304]

By Mr. Troy:

Q. Now, Mr. Black, in the matter of your salary, $75,000, what salary were you getting from the North American Company before you became an officer of the Pacific Gas and Electric Company?

Mr. Phleger: Mr. Examiner, I am going to object to questions of this character.

Mr. Troy: I can't hear.

Mr. Phleger: You will know when I talk I am making an objection.

Mr. Troy: Yes. What is your objection?

Mr. Phleger: That this has nothing whatsoever to do with the issues which are presented by this proceeding.

Mr. Troy: It has a great deal to do with it.

The Securities and Exchange Commission, in the Union Electric Company of St. Louis—that is also

(Testimony of James B. Black.)

controlled by the North American Company—discovered that there were big salaries paid, and there was what the Commision called a kick-back, that is, money, those salaries were not to be appropriated solely by the party to whom they were paid, but out of them was taken money which was put into a fund for political purposes and which was secretly spent for politics.

I want to find out if the same thing is being done here in the Pacific Gas and Electric Company.

[1305]

The Examiner: Will you ask that question, then, if that is what you want to find out?

Mr. Troy: I would like to ask the reason, Mr. Chairman.

By Mr. Troy:

Q. What was your salary when you first became an officer of the Pacific Gas and Electric Company, Mr. Black?

Mr. Phleger: I object to that too, because it is merely a continuation of his former question. I think the Examiner is quite right. If his object is, as he stated, he should ask the question.

The Examiner: Unless you have some necessary preliminary question, if you will put the question that you desire to have answered, rather than reading from statistics or arguing, I think you will get the answer.

Your question is, has any part of his salary been kicked-back, as you have expressed it.

(Testimony of James B. Black.)

Mr. Troy: First, I want to find out the reason why it was made that. Also, at the same time the salary of Mr. Downing was raised to $40,000; the salary of Mr. Coghlan, who is here, was, he was getting $19,000 prior to that time, and his salary was raised to $25,000.

I think there are quite a number of these others—the large salaries were raised at the time Mr. Black's was raised. I would like to find out the reason for the [1306] increase in all those salaries.

The Examiner: You have read those figures from a schedule filed with the Railroad Commission, is that correct?

Mr. Troy: Yes.

The Examiner: Do you want to read all those raises in there, or just the ones you have mentioned?

Mr. Troy: Those I mentioned, I feel certain, have been raised, as I stated.

As to the others, I am not certain. As to Mr. Foote, I haven't got the previous report of the Commission, the report to the Railroad Commission. So I can't tell you. But Mr. Foote is given here as vice-president with a salary of $21,600.

By Mr. Troy:

Q. Was that an increase, Mr. Black?

A. There have been no increases in salaries paid officers since I became president, with the exception of that paid Mr. Coghlan and my own, except those increases which restored the salaries of officers to

(Testimony of James B. Black.)

the levels that they were paid prior to the depression.

The Examiner: Did you get that answer?

Mr. Troy: Yes.

By Mr. Troy:

Q. Was Mr. Downing's salary increased at the same time yours was increased? [1307]

A. No.

Q. Was it increased at any time?

A. It was increased before; it was restored to the level that he was getting prior to the depression. Those officers' salaries were reduced during the depression.

Q. What do you mean by "level", Mr. Black?

A. The same amount.

Q. Same amount.

A. I think I am correct in that, from memory.

Q. That can be easily ascertained.

A. I know Mr. Coghlan's salary was increased above the previous level, but the others, I am quite sure, with the exception of my own, were restored to the level, or to the amounts the officers were getting prior to the depression. My salary was not increased over the original amount at which I was employed for sometime after the other officers' salaries were restored.

Mr. Phleger: Mr. Black, your present salary, how does that compare with Mr. Hockenbeamer's salary?

The Witness: It is the same that Mr. Hocken-

(Testimony of James B. Black.)

beamer received prior to the time when he took a reduction during the depression; but it is exactly the same otherwise.

By Mr. Troy:

Q. Your present salary? A. Correct. [1308]

Q. Wasn't Mr. Hockenbeamer's salary as shown in the report on Special Order 77 (a) at $50,000 a year? A. For what year?

Q. Many years past up to the time he died.

A. No. Mr. Hockenbeamer received the same salary that I am receiving prior to the depression, and he took a reduction during the depression. I don't recall the amount. It is probably in the order of 10 per cent.

Q. That is, you would say he got $75,000 in 1928 and 1929?

A. No. I think that that was in 1930. I don't know the exact date when it was raised.

Q. You use that $75,000 for your own personal purposes? A. Entirely.

Q. Do you pay any money out of your own funds to aid any person seeking public office, or does anybody else use any of your money for that purpose?

Mr. Phleger: I object to that question, Mr. Examiner. I think that that has nothing whatever to do with the issues here.

Mr. Troy: What is the objection?

Mr. Phleger: I think if he wants to question as to whether or not any portion of his salary is paid to him not as his own personal salary, but to

(Testimony of James B. Black.)

be used for the benefit [1309] of the corporation and under its direction, that might be material; but certainly not what he does with his own salary.

The Examiner: I think that is right.

Mr. Troy: Mr. Black himself stated that in his visits with Mr. Hockenbeamer, among other things, he discussed politics.

The Examiner: Yes.

Mr. Troy: This matter that I am—the question now relates to politics.

The Examiner: That is right. Mr. Phleger has objected to it upon the ground that Mr. Black has a right to do whatever he wants with his money that is paid for personal services.

If you want to frame the question to ask Mr. Black whether or not he receives the money with any restrictions attached to it, or instructions that a portion of it should be paid out for political purposes, that question may be propounded.

Do you want to accept that change to your question?

Mr. Troy: Mr. Chairman, it seems to me—of course, I believe——

The Examiner: Let's consider you asked that question.

Mr. Troy: All right. A. Not a dollar.

Mr. Troy: That is what I expected we would get; the [1310] same character of an answer that all the directors and others who appeared here gave as to the influence of the North American

(Testimony of James B. Black.)

Company in the affairs of the Pacific Gas and Electric Company.

By Mr. Troy:

Q. Mr. Black, can you give the figures of gross assets of the Pacific Gas and Electric Company at the present time? They are probably in the 1939 report. A. About $800,000,000.

Q. About. Can you give the figures of the net amount of money received by the company from the sale of stocks and bonds, that is, the gross after deducting the refunding, and deducting expenses both of the company and brokers, and the others?

A. I haven't those figures in mind; no.

Mr. Phleger: I think there is already in evidence in the form of an exhibit gross and net proceeds of all security sales for at least the last ten years.

Mr. Troy: Does it also indicate what ones were retired later by refunding?

Mr. Phleger: Yes.

Mr. Troy: If I had access to that I could get it.

Now, there undoubtedly was a deficiency in the amount of stock and bonds sold. It was testified, I believe, that a great deal of stock was sold below par, was it not? [1311]

Mr. Phleger: There is some testimony that in 1914 some of the stock was sold at less than $100 a share, which was its par.

Mr. Troy: What?

Mr. Phleger: —less than $100 a share, which was its par.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Mr. Black, Mr. Hodges here, I believe testified that after the earthquake and fire there was an assessment levied on the common stock, and all of the common stockholders refused to pay the assessment, and their stock was forfeited. Now, afterwards the company sold $30,000,000 of stock, either that stock or other, and what price did it get for it?

A. I don't know.

Q. Would you mind if—could you have Mr. Hodges here to give the same testimony that he gave in the gas case on that matter, or would you want me to state it?

A. I think you had better ask counsel what they want to do about it, or the Examiner.

Mr. Troy: Would it be proper, counsel, for me to state that Mr. Hodges testified in the gas case——

Mr. Phleger (interposing): We don't care what Mr. Hodges testified in the gas case. If you have any question on any pertinent matter, or rather, any information that [1312] you desire to submit, I suppose you can introduce it.

Q. Would you mind, then, getting the information from Mr. Hodges if he did not testify in the gas case of 1933-34 that the company sold $30,000,000 of stock to common stockholders for $500,000?

Mr. Phleger: You mean the stock that was subsequently bought in?

Mr. Troy: I can't hear you.

Mr. Phleger: The stock which was subsequently

(Testimony of James B. Black.)

bought in for failure to pay assessment?

Mr. Troy: I don't know what it was. I don't remember that detail.

Mr. Phleger: Yes.

Mr. Troy: That was his testimony.

Mr. Phleger: Well, I suggest, Mr. Examiner, that it has no pertinency at all in this proceeding.

Mr. Troy: Oh, it certainly has.

The Examiner: Mr. Troy, what is your opinion of the relation of this fact that you are reciting to these proceedings?

Mr. Troy: Well,——

The Examiner (interposing): As I understand it, the company acquired some of its outstanding shares by declaring an assessment, and upon non-payment of the assessment the shares were forfeited to the company;——

Mr. Troy (interposing): Yes. [1313]

The Examiner (continuing):—that it then turned around and resold those shares for $500,000.

Mr. Troy: Well, whether it was the same stock or not I don't know.

The Examiner: What do you propose to prove by that?

Mr. Troy: Well, I will ask Mr. Black this:

Q. Didn't the company in 1928 and other years afterwards sell large blocks of stock at par to the common stockholders—the $25 par stock—for $30 and more when it was selling on the stock market for $30 and more per share?

(Testimony of James B. Black.)

A. There were several offerings of rights made by the company, and all but one of them, I think, were offerings at par. That offering was at $55. Now, the exact dates or amounts of those offerings I don't recall.

Q. An offering at 55?

A. There was one at 55.

Q. And at that time what was the market?

A. I don't know.

Q. About 80, wasn't it?

A. I don't know.

Mr. Phleger: Those sales were pursuant to the order of the Railroad Commission of the State of California, were they not?

The Witness: In all instances, yes.

Mr. Troy: What? [1314]

Mr. Phleger: Those sales were pursuant to the order and authorization of the Railroad Commission of the State of California.

Mr. Troy: They were pursuant to the application of the company, and I was present at the hearing before the Examiner and I showed them that the company would lose $7,000,000 in the first proceeding, and afterwards Mr. Cutten, the attorney of the company, picked a quarrel with me and tried to strike me with a chair. He slung it on his shoulder and said he would brain me.

The Examiner: Mr. Troy, have you any further questions?

Mr. Troy: Yes.

(Testimony of James B. Black.)

The Examiner: All right, go ahead. Or do you want a recess at this time?

Mr. Troy: I beg your pardon?

The Examiner: Or do you want a recess at this time?

Mr. Troy: Suit yourself, Mr. Chairman.

The Examiner: Have you many more questions?

Mr. Troy: Oh, yes. Yes.

The Examiner: Perhaps we had better take a recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Are you ready, Mr. Troy?

Mr. Troy: Yes.

The Examiner: Proceed with your next question, please. [1315]

By Mr. Troy:

Q. You have large amounts of money—I believe at present there is about $400,000 or over—of consumers' deposits?

A. I don't know the exact amount.

Q. What is done with those deposits?

A. They are returned to the consumer when his credit has been established.

Q. What?

A. When his credit has been established they are returned to the consumer under the rules and regulations prescribed by the Railroad Commission.

The Examiner: Including interest, do they not?

(Testimony of James B. Black.)

The Witness: I think so, yes. I am not sure.

By Mr. Troy:

Q. Since what period has that been done?

A. Well, so long as I can remember.

Q. Well, is it not a fact that the company did not return deposits of consumers paid to it to establish credit although the consumer paid his bill every month for five years, came to the office every month for five years and gave no credit at all for that money—his deposit—and at the end of the five years, when the statute of limitations had gone, then the company deposited that deposit in its own surplus fund? [1316] A. No.

Q. Well, you are testifying opposite to that of Mr. Hodges.

The Examiner: All right. The next question, Mr. Troy.

By Mr. Troy:

Q. When you say "no", Mr. Black——

Mr. Phleger (interposing): He means "no".

Mr. Troy: What did he say?

The Examiner: He said, When he says "no" he means "no".

Mr. Troy: Oh, indeed! Is that so? That's surprising!

By Mr. Troy:

Q. Do you mean solely during the period that you have been president or do you mean the entire history of the company.

(Testimony of James B. Black.)

A. I am sorry, I can't testify as to the entire history of the company.

Q. Then you mean "no", solely since the time you have been president of the company?

A. I mean just as I have testified: That we did take deposits from consumers who we feel have not sufficiently established their credit in order to protect ourselves and the other consumers, and when they have established credit then their deposits are returned to them. And we have a relatively small amount of money represented by deposits of customers. I don't recall the amount, but, as I recall, it is [1317] getting smaller each year.

The Examiner: And that is done pursuant to regulations of the California Railroad Commission?

The Witness: In all instances, yes.

The Examiner: And, so far as you recall, that has been the practice for some years?

The Witness: For 28 years.

Mr. Troy: For 28 years. Then, Mr. Hodges made an incorrect statement in his sworn testimony in the gas case.

The Examiner: All right, go ahead.

The Witness: Of course, those rules and regulations are changed from time to time and I don't recall specifically what they are today.

By Mr. Troy:

Q. What other deposits than those who have established credits are made by consumers?

(Testimony of James B. Black.)

A. Well, in some instances, where we make extension into territory which is not productive or not sufficiently remunerative to justify our making the entire expenditure on our own, we collect a deposit from prospective consumers which is returned to them over a period of years.

Q. In their bill for gas for gas or electricity?

A. It is refunded on some formula. The formula changes from time to time. I don't recall just what it is.

Q. Do you call these latter deposits that you speak of [1318] "deposits" or "advances"?

A. I think they are called "advances in aid of construction". I am not sure of the technical term.

Q. Your annual report states that customers' deposits for the last year at the end of July 31, 1939 were $445,309 and the advances were $832,-096.95. In reading the transcript, Mr. Black, I noticed a little inconsistency. It was probably some omission. But on cross examination you stated that North American Company had invested an investment in Pacific Gas and Electric Company of $60,000,000. A. That's correct.

Q. And at other times either you or the other witness—you, yes—testified that the North American Company, after your discussion with Mr. Hockenbeamer and all, in the settlement of the matter received 1,825,000 shares of Pacific Gas and Electric stock. A. That's correct.

Q. And that you paid for that $2.00?

(Testimony of James B. Black.)

A. (No response).

Q. It's so in the transcript.

A. Paid $2.00.

Mr. Troy: I think it must be in error.

The Examiner: If it is an error, counsel for both parties will later examine the transcript and an appropriate correction can be made. It pays a two-dollar dividend. You [1319] may have some confusion in your notes.

Mr. Troy: "For which they paid $2.00."

The Witness: Probably I said "It pays $2.00."

By Mr. Troy:

Q. And that also it cancelled a debt of $19,000,000. That would be a total of $22,650,000. If that is incorrect, Mr. Black, what price was paid for the stock?

A. The statement I made was that the North American Company had an investment of about $60,000,000 in the property. Now, that refers to the price at which they carry their investment on the books, or did carry it. I am not familiar with what they have done in recent years, but that stock stood on the North American Company books as an investment at about $30 a share.

Q. $30.00?

A. And in addition to the 1,825,000 shares, which Western Power Corporation, a subsidiary of North American Company, received for its interest and the cancellation of the debt owing by its California subsidiaries, I should say, in addition to that

(Testimony of James B. Black.)

1,825,000 shares they acquired 185,000 shares through the exercise of a 10 percent right offering.

The Examiner: At about what price?

The Witness: That was at par, which was made to all common shareholders. [1320]

By Mr. Troy:

Q. That was one of those matters where they offered to the common stockholders stock at par when it was above the market?

A. That is correct.

Q. Well, Mr. Black, why did not the company charge the market for that stock and the other stocks and then have made up the deficiency where it sold stock in the earlier days at less than par?

A. I don't know. I was not the president of the company at that time.

Q. If there was any deficiency between the stock moneys received for the stocks and bonds net and the gross assets of the company, how were the gross assets made to exceed the money received from stock and bonds?

A. I don't understand the question.

Q. Well, if the—you say that the assets today are about $800,000,000? A. That's correct.

Q. And if they received for stocks and bonds net about $600,000,000, how would they make up the deficiency?

A. Well, there has been a great deal of money plowed back into the business out of earnings.

Q. $200,000,000, do you think?

(Testimony of James B. Black.)

A. I don't know the exact figures. I don't know that [1321] your figures are correct. We have a $500,000,000-odd surplus; we have a depreciation reserve of about $125,000,000; and there are other reserves which have been accumulated out of the proceeds of the business.

Q. Yes. Well, that's proper depreciation reserve. But that is not a profit. A. Not at all.

Q. That is to replace property when it gives out. A. That's correct.

Q. Your report states that you acquired the stock of the Vallejo Electric Light & Power Company in 1929. A. That's correct.

Q. And you acquired 4,583⅛ shares?

A. That's correct.

Q. And the book cost, which I suppose is the actual cost to your company——

A. (Interposing) That's correct. I think the number of shares which we issued for that stock was set up on the books at par, as has been the custom for many years.

Q. And the book cost was $229,166.67?

A. I don't know that that figure is correct.

Q. This is your own report here to the Railroad Commission. And the dividends were $32,083.28 on that stock.

The Examiner: Per year?

Mr. Troy: Yes, that year. [1322]

The Examiner: All right. Go ahead with the question.

(Testimony of James B. Black.)

Mr. Troy: How?

The Examiner: Proceed with the question. You are reciting the facts. Now let us have the question.

By Mr. Troy:

Q. That dividend represented 14 percent return on your investment. Now, the rates charged by the Vallejo Company are about the same as the rates that your company charges here in San Francisco and Oakland. A. Are they?

The Examiner: Go ahead. Have you a question to base upon those facts?

Mr. Troy: Yes.

By Mr. Troy:

Q. Now, why do you charge such a higher rate in so many of the other cities and towns of California, some of them having a much larger population and number of consumers than Vallejo has, and some about the same?

A. Well, our rates are set by the California Railroad Commission and they are zoned to reflect approximately the cost of service to the various communities and the zones served. The larger communities have the lower rates and the rural area pays a little higher rate, but they are designed to return to the company an adequate amount to take care of its requirements. Now, I am not an expert on rates and I can't [1323] give you an answer which would explain all of the intricacies of the spread of rates. I certainly couldn't compare our rates with Vallejo rates except to tell you that

(Testimony of James B. Black.)

Vallejo Company serves a very remunerative area and has relatively little distribution in the so-called thin territory, the rural areas, which to some extent on our system the more congested areas have to carry. We cover approximately all of the territory in which anyone lives in northern California and there is a great deal of that territory which does not produce sufficient money to carry the return on the investment that we make there, and the Railroad Commission in setting up our rate structure, which consists of, say, 40 or 50 rates, takes into consideration the return on the entire property and also keeping in mind the actual cost of service in the various zones which we serve.

Q. And you mean to say, then, that you charge a higher rate in San Francisco and Oakland, the Bay area, and Sacramento and Stockton and San Jose and other cities than would be necessary if the needs of those cities only were considered?

A. No, I don't say that. I don't think I can give you any more answer——

Q. (interposing) What?

A. I can't give you any more——

Q. (interposing) Well, you make the cities bear the burden of the loss of the country. [1324]

Mr. Phleger: Now, Mr. Examiner, I think he has asked the question and received an answer, and I don't think he ought to argue with the witness.

The Examiner: I think so. The objection is sustained.

(Testimony of James B. Black.)

Mr. Phleger: Or make a speech either.

The Examiner: Go ahead with your next question, Mr. Troy.

By Mr. Troy:

Q. The North American Company and the Pacific Gas and Electric Company were in competition before the combination or consolidation?

A. No. The North American Company wasn't in competition.

Q. Not directly, but through its subsidiaries?

A. It was in the north part of California, yes.

Q. And both of the companies were pretty near broke through the competition where they were competing? A. No.

Q. Were they selling for less than cost?

A. I think not.

Q. You stated that you objected to the reduction of the dividend of the company from 8 percent to 6 percent and that the North American Company objected also. That's in 1933.

A. I stated that I thought that the dividend action of the Board should be reconsidered and that the full Board should [1325] pass on it.

Q. Because you thought it ought to be 8 percent instead of 6 on account of the condition of the surplus, you said.

A. I said that I would probably have voted to maintain the dividend for at least another quarter or two, but my only action was to request a reconsideration of it.

(Testimony of James B. Black.)

Q. Was the Pacific Gas and Electric Company losing money at that time on its electrical business?

A. I don't know. You mean with respect to an adequate return of its property?

Q. Yes. A. I don't know.

Q. Since you have become president, then, you haven't looked into any of the past financial history of the company? A. Oh, yes; some of it.

Q. You know Mr. Olney who was the attorney for the company? A. I did.

Q. And also his associate in that firm who represented the company here in their argument. At that time they argued for a high gas rate on the ground that the company was losing money on the electrical side. Now, would that be true?

A. Well, they probably——

Mr. Phleger (interposing): I object to this line of questions. It certainly has no bearing on what Mr. Olney and [1326] Mr. Matthew may have argued in some rate proceeding.

The Examiner: Well, there is no time specified as to when P. G. & E. might have been losing money on its electrical business. Do you want to limit that question to a period of time? You have asked Mr. Black whether or not Mr. Olney's statement is correct, that it was losing money on the electrical business. At what time were they supposed to be losing money on their electrical business?

Mr. Troy: In that year of 1932. It was so stated by Mr. Olney and his associate.

(Testimony of James B. Black.)

The Examiner: All right. Do you know whether they were losing money on their electrical business?

The Witness: I don't know what the term "losing" money means, but quite likely what is referred to is a statement which Judge Olney might have made with respect to the electric department earning an adequate return, and he perhaps did make that statement. And if he did make it, I am sure it was correct.

By Mr. Troy:

Q. Yes. Well, if that is the case why has the company since then reduced rates?

A. Because we have been able through more efficient operation and through savings which have been instituted to reduce rates in the past five years to the extent of about 20 percent of our gross, and we hope to continue to reduce them [1327] as we are able and as we are able to make economies and increase the efficiencies of operation.

Q. Now, the first reduction, I believe, was made soon after you became president, wasn't it?

A. The reductions have been made for 40 years.

Q. Well, I mean of those few referred to in the past five years? A. Yes.

Q. And that you said amounted to, I think, $2,600,000-odd, so the papers quoted you; close to that.

A. Well, there have been reductions, I think, every year in the last five.

(Testimony of James B. Black.)

Q. I am asking you as to that first one that you made when you became president.

A. I don't recall the amount. The only one that I recall specifically is the one that we put into effect in October of this year, which amounted to $5,000,000 a year.

Q. I am not referring to that. I will ask you about that later.

The Examiner: He is answering your question, Mr. Troy. He says he doesn't recall the amount of the earlier ones but he does recall this one.

The Witness: I can give you the aggregate in the six years, which is approximately $20,000,000.

Mr. Troy: What I wanted—Mr. Black's statement was [1328] published in the papers. He may remember it when I state this.

The Examiner: Go ahead.

By Mr. Troy:

Q. The reason that reduction was made was that you had recovered up to that time the extraordinary expense or other expense put upon the company because of the cut-over; that is, where you adjusted the burners of consumers and the like.

A. I think you have switched from electricity to gas on me here.

Q. Well, you are right there on that.

A. That gas rate——

Q. (interposing) You're right. I am mixing the two up there.

(Testimony of James B. Black.)

A. The gas rate reduction was in the middle of 1936, and that was due to the fact that we had recovered the loss of earnings during the depression and that we had recovered and recouped the cut-over expense and extraordinary maintenance expense arising out of our change-over from artificial to natural gas service, and that we had succeeded in increasing the use by our consumers and decreasing relatively our cost of service to the point where we could make a voluntary reduction, which we did.

Q. Well, how did you recover it? Out of rates? The money collected? The rates charged the consumers?

A. Yes. They would have to come from our gross income. [1329] Yes.

Q. That is, you made the consumers pay that cost?

A. Correct. It was part of the cost of service just the same as the payroll.

Q. Now, is it not a fact, Mr. Black, that your company at the time and before the cut-over was made advertised extensively in the newspapers and on signboards and your men visiting the consumers also told them that there would be no charge for that cut-over?

A. Well, I don't know what you are talking about.

Q. What?

A. I don't know what your statement means.

(Testimony of James B. Black.)

Q. Your company——

A. (interposing) I think what you are referring to perhaps is the fact that we made adjustments on consumers' burners.

Q. Yes. A. That's correct.

Q. And other costs. And you told the consumers—your men did—and you also advertised in the newspapers and advertised on signboards that the company would not charge the consumer for the expense of that cut-over or adjustment of burners.

The Examiner: Mr. Troy, was there any special charge made for any such adjustments and transfers? [1330]

Mr. Troy: It is in the rate.

The Examiner: I see.

Mr. Troy: And they told the consumers that there would be no charge and then secretly made them pay for it in the rate.

The Examiner: All right. Do you want to answer that question, Mr. Black?

A. Well, I don't think there was any secret about it, that we were expecting to recover the cut-over expenses and the extraordinary maintenance arising out of the change-over from artificial to natural gas. That was a matter involved in proceedings before the Railroad Commission intermittently over a period of five or six years and there was no secret whatsoever about it, and I don't

(Testimony of James B. Black.)

believe that Mr. Troy is accurate in his statements.

By Mr. Troy:

Q. Well, you know, Mr. Black, don't you, that your company did promise the consumers that there would be no charge for the adjustment of their burners?

A. I don't know anything about it. I wasn't here at the time and I have no knowledge of what was published or told the consumers with respect to any of your question.

Q. Well, I suppose we can get thousands of consumers to come here to testify to that fact, if necessary. When the objection was made to the reduction of the dividend from 8 [1331] percent to 6 percent, was it not made necessary by the large payments the company had made in that cut-over and the other expenses of the change?

A. It was thought by the Board of Directors that the earnings of the company and the prospect for earnings in the immediate future did not justify the payment of an 8 percent dividend.

Q. Well, when you say "earnings" you mean net I suppose?

A. Balance for common stock.

Q. What? A. Balance for common stock.

Q. I mean of the gross earnings of the company. You mean the net earnings after deducting expenses?

(Testimony of James B. Black.)

A. I mean the balance for common stock; the common stock earnings.

Q. But you said "earnings", and when you said "earnings"——

The Examiner (interposing) He has explained what he meant by telling you that he meant, and now reiterates, the net earnings which were remaining over available for distribution to the common stockholders.

Mr. Troy: Well, that's after deducting expenses, eh? And it would include this $2,600,000-odd?

The Examiner: I don't know what "$2,600,000-odd" you are referring to, but I think his answer is clear.

Mr. Troy: I beg your pardon? [1332]

The Examiner: I think he has answered your question. Go ahead with your next question.

Mr. Troy: I see some of the gentlemen down there who testified that the North American Company at no time attempted to interfere in the affairs of the company and made no suggestions of any kind, and that it invested the $60,000,000 in the P. G. & E. by throwing it over to the company——

The Examiner (interposing): Have you a question of this witness now?

Mr. Troy: Yes.

The Examiner: All right. Go ahead with it.

(Testimony of James B. Black.)

By Mr. Troy:

Q. I want to ask Mr. Black if any person should offer the North American Company at that time or since to sell to them the Golden Gate Bridge or the San Francisco Bay Bridge would they buy it from them?

A. I am sorry, I can't answer that question.

Mr. Troy: Well, they were so innocent that I thought that they might do that.

The Examiner: Well, they are an eastern company. They would want the Brooklyn Bridge, wouldn't they?

By Mr. Troy:

Q. Mr. Black, you haven't yet stated what salary you received from the North American Company.

Mr. Phleger: I object to that. [1333]

The Examiner: There has been an objection made, and the objection is sustained.

Mr. Troy: Oh, yes. I beg your pardon, Mr. Chairman.

By Mr. Troy:

Q. Now, you stated that you discussed politics with Mr. Hockenbeamer, among other things; financial matters and politics and other things.

A. I think not. I think that I said——

Q. (interposing) What?

A. I think I stated that I discussed elections with Mr. Hockenbeamer.

Q. Elections? A. Elections.

(Testimony of James B. Black.)

Mr. Troy: Well, the word in the trancript as I read it was "politics".

The Examiner: All right. This is preliminary. Now, go ahead with your question.

By Mr. Troy:

Q. Did that discussion of politics include any discussion of the election of Mr. Rossi for Mayor of San Francisco? A. I think not.

Q. Did it include any discussion of Hetch Hetchy? A. Quite likely.

Q. Quite likely. Did it include a discussion of a [1334] means of defeating the City of San Francisco from getting Hetch Hetchy for its own purposes?

A. I don't think I ever discussed any ways and means with Mr. Hockenbeamer with respect to that or any other matter which had to do with elections.

Mr. Troy: What?

The Examiner: Will you read the answer, please?

Mr. Troy: What?

The Examiner: Do you want to listen to the answer? The reporter will read it for you.

(The answer referred to was read by the reporter as above recorded.)

By Mr. Troy:

Q. Did you or your company spend any money to bring about the defeat of Mr. Havenner for a member of Congress? A. Not one dollar.

(Testimony of James B. Black.)

Q. What? A. Not one dollar.

Q. Did you permit or did you pay for signboards that were used that had Mr. Havenner's opponents name on them advertising his opponent?

A. No.

Q. You do a large advertising in signboards?

A. I beg your pardon?

Q. Your company does large advertising on the signboards [1335] that are about the City?

A. We do our own advertising.

Mr. Phleger: He has answered the question and I see nothing gained by arguing about it.

The Examiner: I think he is propounding a further question. That is, he is stating it in an affirmative way: That the company does spend a lot of money for billboard advertising, does it not?

The Witness: For its own purposes; for advertising its own products.

By Mr. Troy:

Q. Do you have a signboard or advertisement for natural gas at the present time of Foster and Kleiser on the north side of Oak Street east of Baker? A. I don't know.

Q. Mr. Williamson, who was a candidate for the Assembly against Mr. Gaffney, had his sign on that same board up to the time you put up your sign. Did you pay for the board while Mr. Williamson's sign was on it? A. I haven't any idea.

Q. What?

(Testimony of James B. Black.)

A. I haven't any idea. If we paid for the board it was—may I have that question again?

(The question referred to was read by the reporter as above recorded.) [1336]

The Witness: No.

By Mr. Troy:

Q. How do you rent those boards? Do you rent a particular, specific board? A. We do.

Q. For a certain period? A. We do.

Q. And this board on Oak Street that I speak of, east of Baker on the north side, had you rented that for a specific period or have you just rented it?

A. I don't know. I haven't the least idea.

Q. Then it is possible, then, that that board was the property of the—the right to put a sign up there—the property of your company while Mr. Williamson's sign was on it?

A. It is not possible that we pay for any sign-board for the use of anyone running for office in San Francisco. That, as I understood, was the purpose of your question.

Q. That's the purpose of it, yes.

A. That's my answer.

Q. You do your own advertising? That is, you write your own advertisements?

A. Our publicity department does. I don't write them personally.

Q. Who is the head of your publicity department? [1337] A. Mr. Al Joy.

(Testimony of James B. Black.)

Q. Mr. Al Joy. And you send those advertisements or reading notices or whatever they may be out to the papers?

A. We send our copy to the papers when we buy advertising space, yes.

Q. And that might be a straight ad or it might be a reading notice or reading matter of some kind?

A. It would be a straight advertisement.

Q. No reading matter at all?

A. Well, there would be reading matter in the advertisement, yes.

Q. Not in the straight ad, but I mean where——

The Examiner (interposing): Does the company furnish news items for the papers out of its publicity department?

That is what you mean, is it not?

Mr. Troy: What?

The Examiner: Does the company furnish the papers news items in addition to their paid advertisements? Is that what you want to know?

Mr. Troy: Yes. And if they pay for them also, those news items.

A. We furnish news items relating to the company's business which we think may be of interest to the reading public. Sometimes they are published by the newspapers, sometimes they are not. We never pay for them. [1338]

By Mr. Troy:

Q. You never pay for them?

A. We never pay for them.

(Testimony of James B. Black.)

Q. What rate do you pay for your advertising?

A. We pay the going rate for the periodical in which we advertise. I suppose that they all have different rates.

Q. Isn't it a fact that the newspapers of San Francisco and elsewhere, I believe, charge your company ten times the regular rate for advertising?

A. It is not a fact.

Q. Did they ever charge your company ten times the regular rate?

A. Not to my knowledge.

Q. Are these reading notices paid for or are they put in by the paper free of charge?

A. If the paper publishes them as news they are published as news, and we pay nothing for them. We pay for the advertising space that we buy and nothing else.

Q. Well, there appeared in various papers of San Francisco and in some of the outside, throw-away, gutter sheets news items on Hetch Hetchy and Secretary Ickes, violently attacking Secretary Ickes; and in some of those papers those articles appeared word for word the same in each of the papers.

The Examiner: Do you have copies of those, Mr. Troy, with you? [1339]

Mr. Troy: No, I have not.

The Examiner: Do you desire to introduce them in evidence?

Mr. Troy: Well, I don't know whether I could get them now or not.

(Testimony of James B. Black.)

The Examiner: All right. Go ahead. That is a preliminary statement. Now, proceed with your question.

By Mr. Troy:

Q. Did your company write advertisements or news items of that kind? A. Certainly not.

Q. Did you make suggestions to anyone to write them? A. Certainly not.

Q. Did any person in your office, in your publicity department, make any suggestion to any person?

A. I can't answer for everybody in my organization, but I am sure that the answer would be "no".

Mr. Troy: Then it is a great mystery, Mr. Chairman, that these articles would appear the same in these papers word for word.

The Examiner: You can enlarge upon that in your written argument, if you propose to file one.

Mr. Troy: Yes. Thank you.

By Mr. Troy:

Q. Now, what does the money that you are paying San Francisco for Hetch Hetchy power amount to per kilowatt, say, [1340] for the past year?

Mr. Phleger: Now, Mr. Examiner, I don't see any relevancy of this to the matter which is the subject of this proceeding.

The Examiner: The objection is sustained.

(Testimony of James B. Black.)

Mr. Phleger: I don't want to make objections, but most of these questions are not material and this certainly isn't.

The Examiner: An objection has been made upon the ground that that line of questioning is not material to this issue, and the objection is sustained unless you want to indicate what you expect to prove by this line of inquiry.

Mr. Troy: I thought it was germane because of the fact that the Commission considers the interest of the public and of the consumers. And this company in the proposed lease to San Francisco of its distribution system in San Francisco proposes to charge the City for the additional current that the City will need 8 mills per kilowatt, and that is almost twice what the company is paying the City.

The Examiner: It still appears to me, as counsel has stated in his objection,——

Mr. Troy (interposing): What?

The Examiner: It still appears, as counsel has stated in his objection, that that is not material to the issue in this proceeding.

Mr. Troy: Not on the ground of the protection of the [1341] public and of the consumers? The City is at the mercy of this company and has been for years in every way.

The Examiner: Are you trying to show that the City will have to pay the Applicant here more for its power than the company is now paying for what it gets from Hetch Hetchy?

(Testimony of James B. Black.)

Mr. Troy: Yes. That is to say that the company wants the City to pay it about a hundred percent more for the power than it is paying the City for the power.

The Examiner: Well, that issue is being determined apparently by some other tribunal than this one——

Mr. Troy (interposing): No.

The Examiner (continuing): —and has not yet been decided, as I understand.

Mr. Troy: Not the matter of that charge.

The Examiner: I will sustain the objection.

Mr. Troy: All right, Mr. Chairman.

The Witness: It isn't the fact, if it is of any interest to you.

The Examiner: Just a minute! I think Mr. Black's observation to my comment might appropriately appear in the record, if it is not already there.

The Reporter: It is there, Mr. Examiner.

The Examiner: Pardon my interruption. Go ahead.

By Mr. Troy:

Q. The amount of money the Pacific Gas and Electric [1342] Company pays the City of San Francisco for Hetch Hetchy power is based on a certain setup which includes a line loss of 26 percent. Is that correct?

A. I don't recall the percentage. It is based upon a transmission loss, yes.

(Testimony of James B. Black.)

Mr. Phleger: Mr. Examiner,——

Mr. Troy (interposing): And that is a loss——

Mr. Phleger (continuing): —don't you think it would be appropriate in the interests of getting somewhere and holding the evidence down to material matters to have counsel—or Mr. Troy, rather, since he alleges he is not an attorney—state what he expects to prove by these various lines of questioning?

The Examiner: That is what I attempted to do and he said he wanted to show that the City was going to be required to pay more for the power they might have to purchase from the Pacific Gas and Electric Company than the Pacific Gas and Electric Company is now paying for what power they buy from the City at the Hetch Hetchy development program, and I sustained an objection to that line of testimony.

Is this a new line of testimony, Mr. Troy?

Mr. Troy: Well, yes, in this respect:——

The Examiner (interposing): All right.

Mr. Troy (continuing): —the Pacific Gas and Electric Company based the charge at that time on a line loss of 26 [1343] percent and that was confirmed by the electrical journals, that its line loss was the heaviest, largest of any of the electric companies in the United States. Then we also had—and I guess Mr. Black was operating—the City Electric, were you not, Mr. Black?

The Examiner: At what time?

(Testimony of James B. Black.)

Mr. Troy: At the time of the Hetch Hetchy so-called—in 1925 when the so-called "agreement" was entered into between the Pacific Gas and Electric Company and the City in 1925.

The Examiner: The new proposed lease has not yet been approved, has it?

Mr. Troy: No.

The Examiner: What do you expect to show in this proceeding, then, by going into this history of what their line loss was or was not in 1925?

Mr. Troy: The line loss of the City Electric—that was one of the subsidiaries or afterwards became the subsidiary—its property did—of the North American Company. Its line loss in San Francisco was 14 percent——

The Examiner (interposing): All right.

Mr. Troy (continuing): —shown by Mr. O'Shaughnessy and the figures that he gave. The company since has acquired the City Electric property, and its line loss—average line loss—over the San Francisco system was, I think, about 22 [1344] percent, Mr. Black.

The Witness: I think it is a little more than that. But I think what you are trying to do is to compare distribution line loss with distribution line loss plus transmission line loss.

Mr. Troy: Oh, no. Not at all.

The Examiner: All of this goes to the question of whether or not the rates are fair, does it not?

(Testimony of James B. Black.)

Mr. Troy: It goes to this, Mr. Chairman: Whether the company is dealing honestly with the City of San Francisco in that rate, although its line losses now are about 4 percent less than they were when the agreement was entered into—and there are other savings—yet it has made no reduction or, rather, no increase in the compensation paid the City of San Francisco. It is still maintained on the same basis.

The Examiner: All right. Now, have you some other line of inquiry that you want to propound?

Mr. Troy: Yes.

The Examiner: What does it relate to?

By Mr. Troy:

Q. Your company is paying large sums of money to hundreds of improvement clubs and other organizations?

A. We try to do our part in supporting these civic enterprises.

Q. As is shown by your report on the General Order 77-A [1345] of the Railroad Commission?

A. All such contributions are——

Q. (interposing) What?

A. All such contributions are reported to the Railroad Commission and disallowed in rates, I think, almost entirely.

Q. Now, the Chamber of Commerce, the Downtown Association and Mr. Eliel, who is now on the staff of Stanford University, went before Secretary

(Testimony of James B. Black.)

Ickes on behalf of your company to prevent Secretary Ickes from allowing the injunction to stand. Was not your company paying money, as shown by your report to the Railroad Commission in that 77-A General Order—was not your company paying money to each of those organizations represented there?

A. We were paying——

Mr. Phleger (interposing): Mr. Examiner——

Mr. Troy (interposing): What was the answer, please?

Mr. Phleger (continuing): —he is asking this witness for a conclusion there. He is stating the fact that contributions were made and he stated what these people did.

The Examiner: Counsel has not agreed that the statement of fact is correct. I think the question is appropriate and the objection will be overruled.

The question is, as I understand it, Did not the Pacific Gas and Electric Company pay as reported to the Railroad Commission certain sums to these organizations? [1346]

Mr. Troy: Yes.

The Examiner: And they reported it and it is a fact, is it not?

The Witness: It is a fact that they are continuing sums in the form of dues and so forth.

The Examiner: All right. The next question, Mr. Troy. We are coming close to the recess now. We will have to move along.

(Testimony of James B. Black.)

Mr. Troy: I have got quite a number more here.

The Examiner: Go ahead. We will try to finish them up. I would like to permit Mr. Black to leave at the noon recess and not necessitate his return.

Mr. Troy: Oh, I see.

The Examiner: He is a very busy man, so if you can move along.

Mr. Troy: I will hurry through.

By Mr. Troy:

Q. Mr. Black, your company has been advertising recently that you have reduced rates, both gas and electricity——

A. (interposing) That's correct.

Q. (continuing) —to a total amount of $5,000,000. A. That's correct.

Q. Was that reduction imposed on you by the Railroad Commission or voluntarily on the part of your company?

A. It was the result of negotiations with the Railroad [1347] Commission, and those negotiations developed the desirability of reductions in both gas and electric rates. I can't say that it was entirely voluntary.

Q. The Railroad Commission held many meetings that it called "informal conferences" with consumers in a number of cities or with generally only the officials or some officials of the City. Now, was

(Testimony of James B. Black.)

your company represented at any of those informal conferences?

A. I think we had one of our local people sit in at the meetings in order that they might answer any questions that might be asked.

Q. At what meetings did they sit in at?

A. At these conferences which were held by the Railroad Commission representatives in the various cities.

Q. Are you sure of that? I didn't notice the name of anybody representing your company in the transcripts.

A. I think in each instance we had someone present to answer any questions that might be asked.

Q. Was any sworn testimony taken at any of those informal conferences?

A. Not that I know of.

Q. Is there any testimony sworn to of any kind that will enable me or will enable any consumer to verify the truth of your statement, that you have reduced rates $5,000,000?

A. I don't know. If you want to get the real answer [1348] you can get it from the Railroad Commission, who have investigated our earnings and records very carefully over the period of the past five years and particularly during the past year with respect to this recent rate reduction, and they know all there is to know about everything that has to do with——

(Testimony of James B. Black.)

Q. (interposing) Well, Mr. Black, I hope you are not trying to make a goat of the Railroad Commission.

A. I am not. I am telling you just how these rate reductions are arrived at.

Q. Is it not a fact, Mr. Black, that these reductions have been made heretofore that you speak of —they were made by an order of the Railroad Commission?

The Examiner: The question has been asked and answered.

Mr. Troy: I beg your pardon?

The Examiner: You have already asked that question. He has answered it.

Mr. Troy: No, you don't catch me. The previous reductions——

The Witness (interposing): All rate reductions are made by order of the Railroad Commission.

By Mr. Troy:

Q. This reduction—there was no order at all of the Railroad Commission, was there?

A. I am quite sure there was.

Mr. Troy: Well, I have looked over the papers and I [1349] couldn't find any——

The Examiner (interposing): All right.

Mr. Troy (continuing): —and I have here the——

The Examiner (interposing): Mr. Troy, if Mr.

(Testimony of James B. Black.)

Black's answer is incorrect he has given you his best recollection.

Mr. Troy: Yes.

The Examiner: And if you want to introduce the proper evidence in the way of a document or certificate from the proper official of the Railroad Commission to show that an order did not issue by the Railroad Commission relating to this last reduction, contradicting his statement, that could be done in an appropriate way. But there is no necessity of arguing with this witness.

Mr. Troy: No. You are right. I beg your pardon.

The Examiner: He has given you his best recollection. Can you proceed with your next questions so we can move along here, please?

The Witness: May I say I don't know what form the order may have taken. It may have taken the form of a formal approval of rate schedules, which we must obtain in all instances. Whether there was a formal order or——

By Mr. Troy:

Q. (interposing) Now, here is Schedule D-1, Domestic Service for the City of San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany, with the rates [1350] and all that your company filed with the Railroad Commission, date effective October 8, 1940 and date issued September 30, 1940. Now, is there anything

(Testimony of James B. Black.)

on that that shows that it was made by order of the Railroad Commission? A. No.

The Examiner: The answer is "no".

Mr. Troy: "No"?

The Examiner: You were under the table and didn't hear it, I think.

By Mr. Troy:

Q. So that these rates have been issued, as far as the record goes, by your own company on your volition and not by order of the Railroad Commission?

A. And filed with the Railroad Commission as required by law, and they would not be made effective unless they had the approval of the Railroad Commission.

Q. This that I just showed you was given me by your office where I pay my bill down on Sutter Street, and I have also the schedule of the rates. In nowhere does it say that these rates were fixed by the order of the Railroad Commission——

The Examiner (interposing): All right.

By Mr. Troy:

Q. (continuing) —although the previous rates prior to that time were.

The Examiner: All right. [1351]

By Mr. Troy:

Q. And how can a consumer or any other person verify your statement that you have reduced rates $5,000,000?

(Testimony of James B. Black.)

The Examiner: That question has been asked and answered. He refers you to the files of the Railroad Commission.

Mr. Troy: No. They don't show, Mr. Chairman. He is trying to pass it off to the Railroad Commission.

Pardon me, Mr. Black.

The Witness: No, I am not trying to pass it off at all.

The Examiner: I think he has told you that, as a matter of law, they can't impose a rate structure without the approval of the Railroad Commission and, therefore, the Railroad Commission has the information.

Mr. Troy: No. All they do and all they have done in this case was to file the rate with the Railroad Commission and the Railroad Commission accepted the rate.

The Examiner: All right.

Mr. Troy: But that don't give sworn testimony of any kind and, in fact, the rate itself don't give any testimony as to how the rate was arrived at.

The Examiner: May I ask you this, Mr. Black: If the information is not available in the files and records of the Railroad Commission of the State, do you know anywhere that that complete information is available as sworn testimony?

The Witness: I do not. [1352]

The Examiner: All right. Go ahead.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Is your company merely guessing at this $5,000,000 reduction?

A. No. We are estimating it very accurately.

Q. What?

A. We estimate it very accurately.

Q. Estimate it?

A. There is no other way to get at it.

Q. Now, your company introduced natural gas into San Francisco about 1930?

A. That's correct.

Q. And natural gas was in use in the City of Los Angeles and other cities in the southern section of the State for fully ten years before that time?

A. I think that's approximately correct, yes.

Q. And what was the reason that your company introduced natural gas here?

A. Because it was possible to do it as a result of the Kettleman Hills discovery about 200 miles south of San Francisco, which made the transmission of natural gas and its introduction on our system possible.

Q. Was not one of the companies in Los Angeles getting gas from the San Joaquin Valley, approximately the same area where you now are getting gas from, conveying it to Los Angeles [1353] and distributing it and selling it there for ten years before your company started to sell natural gas?

(Testimony of James B. Black.)

A. I don't know that. I presume that some gas was transported from the San Joaquin Valley.

Q. What?

A. I presume that some gas was transported from the San Joaquin Valley for ten years, transported to Los Angeles; but a great deal of the gas supply of Los Angeles comes from the Los Angeles Basin.

Q. Yes, that's true. But I mean they did acquire the Midway Company, wasn't it, that was transporting it? They had the subsidiary called the "Midway Company" that was transporting it from the San Joaquin Valley to Los Angeles?

A. I think so. I am not sure.

Q. And why is it that your company—the distance that they conveyed it was approximately the same as the distance you now convey gas to San Francisco, isn't it, from the southern part of the San Joaquin Valley?

The Examiner: I can take judicial notice of that. I can look at a map.

Mr. Troy: What is that?

The Examiner: I can take judicial notice of that by looking at a map. Do you have a question now predicated upon that fact?

Mr. Troy: Yes. [1354]

The Examiner: Go ahead.

By Mr. Troy:

Q. Is it not a fact that your company was opposed to the installation of or furnishing of the

(Testimony of James B. Black.)

natural gas to the people of San Francisco and that it did nothing—first, I will ask that first question.

A. Not to my knowledge.

Q. Is it not a fact that your company did nothing to supply natural gas to the people of San Francisco up to about 1929, approximately?

A. Well, I am quite sure there were a great many investigations made prior to that time as to the feasibility of bringing natural gas into San Francisco, but it was not until the very large Kettleman Hill discovery was made that it was deemed that the supply was sufficient to justify the expenditure of the money necessary to build transmission lines and to change over from artificial to natural gas. That discovery, which is one of the largest fields in California, made it possible to bring natural gas to San Francisco. And immediately after the discovery the start was made to do so.

Q. Is it not a fact, Mr. Black, that the Standard Oil Company first took steps to supply natural gas to this Bay area, and also the Western Pipe Line Company, I believe—I am told it is a Texas concern—and that they, both of them, applied to the Railroad Commission for permission to build pipe lines [1355] and transmit natural gas to this area?

Mr. Phleger: Now, just a minute. May I make this observation, Mr. Examiner?

(Testimony of James B. Black.)

By Mr. Troy:

Q. Will you answer?

Mr. Phleger: The order which appears in the record at page 1,189——

Mr. Troy (interposing): A little louder, please.

Mr. Phleger (continuing): —denying Mr. Troy's application to intervene says "It is further ordered that the said Edward P. E. Troy shall be permitted to participate in any hearing in this matter to the extent of introducing evidence and cross examining witnesses provided, however, that such evidence and cross examination are competent, relevant and material to the issues involved".

I would first make the observation that none of these questions, with the exception of possibly one or two, have been cross examination because they have been upon matters as to which this witness was not questioned about on direct. And I would make the second observation that none of them are competent, relevant and material——

Mr. Troy (interposing): Well, Mr.——

Mr. Phleger (continuing): It seems to me that, having taken something over an hour now, counsel ought to be required to state what he expects to prove by these questions and to [1356] show the relevancy and, perhaps, if he intends to introduce evidence he had better produce these people as his own witnesses.

The Examiner: You heard counsel's statement, did you not?

(Testimony of James B. Black.)

Mr. Troy: Not all of it, no.

The Examiner: He has read into the record the order which you read into the record here the other day——

Mr. Troy (interposing): Yes.

The Examiner (continuing): —limiting the extent to which you are to be permitted by Commission order to participate in these proceedings.

Mr. Troy: Yes.

The Examiner: And his point is that the questions that you have been propounding have, in the first place, not been correctly proposed as cross examination; and, in the second place, that they are not material to the issues; and infers that, in the event that you do not confine yourself to the issues, he will begin now to interpose objections to your questions, all or most of which he contends are objectionable, although he has not objected. If you have very many more questions would you mind stating for the record what you intend or hope to prove by this line of inquiry? You say you have only got two or three more there?

Mr. Troy: Oh, no. From here down (indicating).

The Examiner: What do they purport to show?

[1357]

Mr. Troy: First, will you permit me to say that this matter that he objects to—there have been statements here by different witnesses that the company is very efficient in its management; that it

(Testimony of James B. Black.)

tries to serve the people of the City; and that it is a great public benefactor, in other words. I am trying to show by the questions I have just asked that the company, and, as the questions stated,—that the company did not want to serve natural gas but it was forced to by these applications of the Standard and the Western Pipe Line.

The Examiner: All right. From here on down and the next page (indicating), is that the limit of your questions?

Mr. Troy: Yes.

The Examiner: Do you suppose you could finish those in another five or ten minutes?

Mr. Troy: I will try to.

The Examiner: Do you remember the question pending, Mr. Black?

The Witness: Yes. And I don't know the answer to it. I don't believe that the statement is correct. I was in New York at the time and, of course, it was before the Pacific Gas and Electric Company acquired the properties of the Western Power Corporation in San Francisco. But I do know generally that the reason that it was possible to serve gas here was, as I have stated, and that it is my belief that immediately upon determination of the feasibility of supply of natural gas here the Pacific Gas and Electric Company took such steps [1358] as were necessary to supply such gas, and at the present time it is supplying such gas at rates which are lower than the Los Angeles rates.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Well, you speak of "rates", Mr. Black. Were not gas rates, when the natural gas was distributed here, raised a hundred percent over the manufactured gas rate?

A. They were reduced 50 percent.

Q. How do you figure that? Wasn't a ready-to-serve charge imposed on the consumer in the first time in the history of San Francisco?

A. The rates for natural gas which were put into effect at the time of its introduction here were approximately the same as the rates for artificial gas, but the b.t.u. heating content was nearly double—approximately double—which would mean that the consumer would be able to get twice the service for the dollar.

Q. You haven't answered my question, Mr. Black. A. I am afraid I can't.

Q. Did not your company impose a ready-to-serve charge on the consumer?

A. I don't know. I don't know. I am talking about the——

Q. (interposing) Of 75 cents, and were they not charged that in addition to the rate of 85 cents?

The Examiner: 75 cents a month or just the first month? [1359]

Mr. Troy: A month; every month.

The Witness: I don't know, Mr. Examiner, the

(Testimony of James B. Black.)

various forms of the rates, but I do know the general effect of those rates——

The Examiner (interposing): All right.

The Witness (continuing): —and that is as I have stated.

Mr. Troy: Here in this gas rate, you see, Mr. Chairman——

The Examiner (interposing): Is this the same document that you referred to before?

Mr. Troy: This is the electric rate, rather. You see right above the rate schedule it says at the top "Ready to serve charge 40 cents".

The Examiner: Do you want to put this in evidence?

Mr. Troy: All right, yes.

The Witness: I might say with respect to that that our domestic rates in San Francisco are lower than the domestic rates and, I believe, the commercial rates generally in Los Angeles, and we pay out about 20 percent of our gross earnings in taxes.

The Examiner: This charge, which I don't see on this instrument,——

Mr. Troy (interposing): Here it is, see? (Indicating).

The Examiner: "Service charge per meter per month is 40 cents and 75 cents."

Mr. Troy: This is electric, and for gas it was 75 cents. [1360] Now I believe it is 70 cents.

The Examiner: All right. And the question is,

(Testimony of James B. Black.)

Mr. Black. Was this the first time that such a service charge had been imposed by the company?

The Witness: This year?

The Examiner: No. In 1935 you are talking about?

The Witness: I don't know. I don't know at all.

The Examiner: All right. Go on with your next question from your notes there.

This will be received in evidence as Exhibit A.

(The document referred to was marked "Troy" Exhibit A and was received in evidence.)

By Mr. Troy:

Q. You claim for your company compensation because the b.t.u.'s of the natural gas are higher than manufactured gas. Who produces the natural gas? Does your company produce any natural gas?

A. No, I don't think we do except in emergency; that is, of high b.t.u. gas in emergency. We, of course, don't produce any natural gas.

Q. It's the oil companies and the oil-gas companies and pure gas companies that have spent their money to sink gas wells and oil wells that are producing the gas, isn't it?

A. That's correct. We purchase practically all of our gas, but we spend the money to get it to the customer. [1361]

Q. What does it cost you to get it to the San Francisco Gate?

(Testimony of James B. Black.)

A. I don't know offhand.

Q. Isn't it the total transportation cost? Isn't it the same as was testified to in the gas case of 1933-1934, five cents a thousand cubic feet?

A. No, not at all. It's considerably greater than that, but I don't recall the figure.

Q. Transportation. And what are you paying to the companies that produce the gas for the gas? How much a thousand cubic feet?

A. We pay different rates. Every contract is different.

Q. You are paying five cents to some, six cents to some, seven to others? A. Ten to others.

Q. Yes. But it averages about six and a half cents, does it not?

A. I think it's higher than that.

Q. What?

A. I think it's higher. I don't know the exact figure.

Q. Well, the gas that you transport here to San Francisco and that is used under the boilers of your electric department, what are you charging the electric department for that?

A. I don't recall. We only use that gas when there is [1362] a surplus.

Q. So it is a heavy drain on the company?

A. It is not a heavy drain. It is just the opposite. It is used under the boilers when we have a surplus of gas which we can't sell to the regular

(Testimony of James B. Black.)

firm consumers. Our boilers in our steam plants are all equipped to use oil or gas operation.

Q. And you are charging, according to the testimony in the gas case of '33-'34, 12 cents to your electric department to be paid to the gas department for that gas that they burn. Are you charging the same today? A. I don't know.

The Examiner: Does that exhaust your questions, Mr. Troy?

Mr. Troy: Oh, no. No, Mr. Chairman.

The Examiner: I thought you had come to the end of your notes. You were folding them up.

Mr. Troy: No. I am still here (indicating), and Mr. Black by his answers suggested the other questions.

By Mr. Troy:

Q. Did not your company, the Pacific Gas and Electric Company—by the way, I should preface it with the fact that, Did not your company and the Standard Oil Company, after the decision of the Railroad Commission in that contest, join in building a pipe line up the San Joaquin Valley, in the corporation—you call it the "Stan-Pac" corporation? [1363]

A. That is correct. That's one of our lines.

Q. Yes. And also you have a line of your own up the Coast? A. That's correct.

Q. And you sell gas from that line to a subsidiary of the Standard Oil Company?

(Testimony of James B. Black.)

A. No, I don't think so. I think that gas—well, I am not sure of that. I am not sure.

Mr. Phleger: Now, Mr. Examiner,——

By Mr. Troy:

Q. (interposing) And is it not a fact, Mr. Black,——

Mr. Phleger (continuing) —we have refrained from objecting. I see no object whatever in pursuing this line.

The Examiner: There is no pending question now. There is an objection made to this line of inquiry. What do you propose to show by these two or three questions?

Mr. Troy: I want to show by this next question that the company has entered into an agreement which, if it were in interstate commerce, would be in violation of the Interstate Commerce Act and the Anti-Trust Act.

By Mr. Troy:

Q. That is to say, your company divided the State of California with the Standard Oil Company so that you agree not to intrude upon each other's territory.

The Examiner: Wait a minute. You are asserting a fact. [1364-5]

Is that true, or do you know, Mr. Black?

A. We have an agreement with the Standard Oil Company which, I believe, rose out of the proceedings before the Railroad Commission.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Louder, please, Mr. Black.

A. (continuing) Which, I believe, rose out of proceedings before the Railroad Commission whereby certain gas distribution territory is taken care of by the subsidiaries of the Standard Oil Company, and that territory is quite small. It is around in northern Contra Costa County and in the general area of Santa Cruz and Gilroy, and——

Q. (interposing) San Benito and Monterey.

A. Not Monterey.

The Examiner: Has that contract been approved by the Railroad Commission?

The Witness: Oh, yes.

Mr. Troy: Yes. It is on file with the Railroad Commission.

The Examiner: And the rates pursuant thereto and which have been charged subsequent thereto have also been submitted?

Mr. Troy: There is no rates; just a division of territory.

The Witness: In all instances. And the division of territory was approved by the Railroad Commission, if I am not [1366] mistaken, and I know that the construction of the jointly-owned pipe line was approved by the Railroad Commission and our half was dedicated as a public utility, and that agreement provides for other things. It provides for the joint operation of the pipe line and it provides

(Testimony of James B. Black.)

that the Standard Oil or its subsidiaries, or both, will give standby service to us with respect to gas supply, if we need it, and we would do the same for them in the case of emergency.

The Examiner: All right; reciprocal.

By Mr. Troy:

Q. In the Standard Oil Company, as set by that agreement, your company has been selling gas and electricity to the San Juan Cement Works, and you are paying five percent of your revenue from the gas and five percent from the electricity to the Standard Oil subsidiary, are you not?

Mr. Phleger: Now, I object to that question.

The Examiner: The objection is sustained. Go ahead, Mr. Troy.

Mr. Troy: That was testified to by——

The Examiner (interposing): All right. The objection is sustained. Next question.

By Mr. Troy:

Q. Mr. Miller—you are quite a friend of Mr. Miller's. Why was it that Mr. Miller, when he gave the list of corporations that he was director of, had been in the past, omitted [1367] to state that he was a director and president of the Key Route Company in 1919-20 and some other years, and it was put through insolvency at that time, although it had been a solvent company, and he drew down just a few days before they went to court $4,000

(Testimony of James B. Black.)

as a salary from that bankrupt company? Why didn't he state that?

Mr. Phleger: I object.

The Examiner: I think that question calls for hearsay testimony and is not cross examination. The objection is sustained to that.

Mr. Phleger: And is not material, in addition.

The Examiner: Sustained on that ground also.

By Mr. Troy:

Q. Your company brought an injunction suit in the United States Court against the enforcement of the gas rates and, to be brief, in the second and final decision after the United States Supreme Court had overruled the previous decision the Judges found that during the three years the injunction was in effect, the first year you earned net 6.6 percent, the second year 7.5 percent, and the third year 8 percent on your investment in the gas properties; and later when the Judges came to fix the interest rate that your company should pay on that money you had collected, and including this interest, as I understand it, I have been informed that the attorney of the Railroad Commission asked the Court to fix the interest [1368] at 6 percent. Your own attorney objected to that and said it should be 5 percent, and then the Court later very graciously fixed it at 4 percent—4 percent. Can you explain that, Mr. Black?

Mr. Phleger: I object.

(Testimony of James B. Black.)

The Examiner: The objection is made upon the ground that it is not material and that it calls for the conclusion and opinion of the witness. I don't think that it is within the issues here. I don't believe it would be very helpful so I will sustain the objection.

Mr. Troy: All right, Mr. Chairman.

By Mr. Troy:

Q. Do you consider this agreement of a lease of your property to the City of San Francisco that your company drew up and is approved or by the Supervisors and Mayor Rossi and the Public Utilities Commission—do you consider that a—"Plan C", it is called, and then presented to Secretary Ickes and was rejected by him—Do you consider it a fair agreement? A. I do.

Mr. Phleger: I object to that upon the ground that this question and the whole line of questioning are not within the scope of the order made by the Securities and Exchange Commission, which permits Mr. Troy——

Mr. Troy (interposing): Well, Mr. Chairman,—— [1369]

Mr. Phleger (continuing): —to participate in these proceedings.

The Examiner: Sustained.

Mr. Troy: Mr. Chairman, my purpose in this is to show the unfairness in this agreement and the trickery of the company so as to prevent the City

of San Francisco from ever reducing electric rates, what they will be selling in competition with the company's gas, and in that way the company can keep up gas rates on the gas consumers of San Francisco. So you see it has a double effect.

Mr. Phleger: May I make this further suggestion?

The Examiner: The objection is sustained to your inquiry.

Mr. Troy: All right.

The Examiner: Do you want to make some further comment?

Mr. Phleger: Yes. I would like to make this further comment: That for the last half hour at least counsel has not asked a single material question. He has made various statements, argumentative in form, and expressing his own views——

Mr. Troy (interposing): Just like the attorney for the other side.

Mr. Phleger (continuing): —and I would make the observation that it would seem to me appropriate that the Examiner might direct that Mr. Troy place his statements and arguments in the form of a memorandum which might be made part of [1370] the record in this proceeding rather than stating them——

Mr. Troy (interposing): I can probably finish this——

Mr. Phleger (continuing): —in argumentative form as questions to this witness.

(Testimony of James B. Black.)

Mr. Troy: I haven't got much more to ask. I could probably have finished it if the gentleman hadn't made that long talk.

The Examiner: I appreciate the suggestion.

I have already suggested that to you, Mr. Troy, and I will reiterate it again in a few minutes. Would you mind letting me see how many more you have got there?

Mr. Troy: There is one, two, three and four and these (indicating).

The Examiner: Five questions?

Mr. Troy: Well, that I have already——

The Examiner (interposing): You have covered that?

Mr. Troy: Yes.

The Examiner: That leaves four.

By Mr. Troy:

Q. Mr. Black, did not your company enter into an agreement with certain oil companies and they with you that you could solicit their oil customers and they would not oppose your solicitation, and that then if you got the company or the customer away from the oil company that you, your company, would then buy additional gas in the oil fields equal in [1371] b.t.u.'s to the b.t.u.'s of oil that the oil company was selling to its customer here that you got?

A. I don't know. I am quite sure there are no such agreements in effect now.

(Testimony of James B. Black.)

Q. Well, Mr. —— not your secretary,——

The Examiner (interposing): Just a minute now! Let's not argue. The witness says he doesn't know and he doesn't believe any such contracts are in effect now. You heard his answer?

Mr. Troy: Yes.

The Examiner: All right.

Mr. Troy: It was in effect, Mr. Chairman, and testified to by their witness.

The Examiner: In some other proceeding? Not here?

Mr. Troy: Yes.

The Examiner: All right. Go ahead with the next question.

By Mr. Troy:

Q. Do you employ detectives in your organization? A. No.

Q. No detectives?

A. I don't know of any detectives.

Q. What?

A. I don't know of any detectives in our employ.

Q. Do you employ any men that you would call "spotters" [1372] or men to follow people, men to get information for you?

A. I don't know of them.

Q. You don't know?

A. I don't know of any, if they are so employed.

(Testimony of James B. Black.)

Q. Do you employ burglars? This is the burglars that burglarized my apartment and stole my books and data and papers relating to your company and the Market Street Railway.

The Examiner: When was this?

Mr. Troy: It has been going on for 30 years.

The Examiner: Do you know of anyone being employed for such purpose by your company?

The Witness: I do not.

The Examiner: Have you ever heard of anyone being employed by your company for such purpose?

The Witness: I have not.

The Examiner: If you are going to recite some history, I would rather not have it on the record unless you have something to support it. You have told us "off the record" about having difficulty with people going through your apartment.

Mr. Troy: And following me on the streets, too, wherever I go.

The Examiner: Any other questions of this witness?

By Mr. Troy:

Q. Mr. Black, does your company own the water works in the Town of Auburn, possibly the County Seat? [1373]

A. I think we do. We distribute water for domestic purposes in that area.

(Testimony of James B. Black.)

Q. You convey that water to the town in an open ditch, don't you?

A. Part way, yes. It is used for generating power, first.

Q. Yes. And that ditch also flows under dwellings and rooming houses and others in the town?

A. I doubt it. I don't know. I don't know the detail of it.

Q. How did you acquire that works and when?

A. I don't know.

Q. Is it not a fact, Mr. Black, that the water works in Auburn were owned by a resident of the town, and some time along 10 or 12 years ago he proposed to sell the works to the City and the City then accepted his offer and put up a bond issue for the people to vote upon, and when the election day came that your employees from the Sacramento Valley came up to Auburn and electioneered around the booths urging people to vote against it, and by that means you defeated the bond issue and then the person owning the works had to sell the works to you at your price?

A. I have no knowledge whatsoever of the facts that you recite.

Mr. Troy: Well, that will complete what I have.

[1374]

The Examiner: Fine. Thank you very much, Mr. Troy. I appreciate your participation in this proceeding and I think the Commission order would entitle you, if you desire, to present any evidence

(Testimony of James B. Black.)

for the record and to present your argument in writing, if you desire to do so.

Mr. Troy: I will be glad to do so.

The Examiner: You are a very prolific writer, you say, and I would like to have you present your argument in that manner, if you so desire.

Mr. Troy: Well, I don't say that I am a prolific writer. I generally try to be——

The Examiner (interposing): Perhaps that is my conclusion, but you have told us that you have written considerable manuscripts.

Mr. Troy: I generally try to be as brief as possible.

The Examiner: I appreciate that. You may file a written memorandum for the record, if you wish.

Mr. Troy: Thank you. Thank you, Mr. Black.

The Witness: You are welcome.

The Examiner: Do either of counsel have any further questions of this witness?

Mr. Phleger: No questions.

The Examiner: You may be excused, and I thank you for your attendance and your patience.

The Witness: Thank you. I enjoyed it very much. [1375]

(Witness excused.)

The Examiner: We will be in recess until 2:00 o'clock this afternoon.

(Whereupon at 12:45 p. m. a recess was taken until 2:00 p. m. of the same day.) [1375]

Afternoon Session

(Whereupon, pursuant to the taking of recess the hearing was resumed at 2:00 p. m.)

The Examiner: You may resume when you are ready.

Mr. Phleger: I offer in evidence as Applicant's Exhibit next in order Decision No. 28517 of the Railroad Commission of the State of California, dated January 20, 1936, in the matter of the application of the Great Western Power Company of California, and so forth, to transfer its properties to the Pacific Gas and Electric Company.

The Examiner: It will be received as Applicant's Exhibit No. 46.

(The document referred to above was marked Applicant's Exhibit No. 46, and was received in evidence.)

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 47 Decision No. 31354 of the Railroad Commission of the State of California, dated October 13, 1938, in the matter of the application of the San Joaquin Light and Power Corporation and the Pacific Gas and Electric Company for an order authorizing the Pacific Company to assume the

debts, liabilities, and obligations of the San Joaquin Corporation to distribute and transfer to Pacific Company its plants, properties and other assets.

The Examiner: It will be received in evidence and so [1377] marked.

(The document referred to was marked Applicant's Exhibit No. 47 and was received in evidence.)

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 48 Decision No. 31355 of the Railroad Commission of the State of California, dated October 13, 1938, in the matter of the application of Midland Counties Public Service Corporation and Pacific Gas and Electric Company for an order authorizing Pacific Company to assume all existing debts, liabilities, and obligations of Midland Corporation to persons other than Pacific Company, and authorizing Midland Corporation to distribute and transfer to Pacific Company the properties and assets of Midland Corporation.

The Examiner: It will be received in evidence and so marked.

(The document referred to was marked Applicant's Exhibit No. 48 and was received in evidence.)

Mr. Phleger: I would like the record to show that Applicant has produced, either in its amended and supplemental application or by way of exhibit,

all of the documents and material requested by the letter of Roger S. Foster, counsel to the Public Utilities Division, dated September 7, 1940.

The Examiner: Have you checked that, Miss Calkin?

Miss Calkin: Yes; that is correct.

Mr. Phleger: Having in mind the extent of the evidence [1378] already introduced, and the fact that Mr. Freeman and Mr. Fogarty are residents of New York and not available here, and believing that their testimony would be but supplementary and corroborative of the testimony already introduced by Applicant, Applicant rests at this time.

Should the Commission feel later that the testimony of Mr. Fogarty and Mr. Freeman should be had, why if that is communicated to us we will be glad to call them; otherwise we will rest at this time.

The Examiner: At the first portion of this hearing, I believe at the opening of the hearing on the first day, Mr. Phleger you made some motion with respect to the request for a Trial Examiner's findings and report. At that time I suggested that altho the rules of practice do not provide for the writing of such report in matters under the Public Utility Holding Company Act, that you might desire to make that motion at a later date, and asked that you defer it at that time.

In any event, if you desire to renew that motion it will have to be submitted to the Commission

which, if the Commission grants the motion, would instruct me to prepare such a report and, in that event, I would ask that upon your receiving notice that your motion, if it is presented, is granted, that you prepare a request for proposed findings, if you would be so kind as to do that.

Mr. Phleger: Yes. I assumed that after the closing of [1379] our case that counsel for the Commission has some testimony and evidence to introduce, and I intended following that, both to renew my motion with respect to an Examiner's report and give notice also of our request for special findings.

The Examiner: All right.

Have you any further testimony, Miss Calkin?

Miss Calkin: Yes. The Commission desires to call Mr. Charles Blyth as its witness.

The Examiner: Is Mr. Blyth here?

Whereupon—

CHARLES R. BLYTH

was produced as a witness for and on behalf of the Commission, and after being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Calkin:

Q. State your name, please?

A. Charles R. Blyth.

(Testimony of Charles R. Blyth.)

Q. Where do you reside, Mr. Blyth?

A. Burlingame, California.

Q. How long have you resided in California?

A. About 31 years.

Q. What is your business?

A. I am president of Blyth & Co., investment bankers.

The Examiner: A corporation? [1380]

The Witness: A corporation of California.

By Miss Calkin:

Q. Are you a principal stockholder of that company?

A. I am a stockholder. I think I am the largest stockholder.

Q. How long has the corporation of Blyth & Co. been in existence?

A. Well, there have been three stages, starting in 1914 with Blyth Witter & Co. which, as far as the active end of the business was concerned, was converted into a partnership in 1930. In, I think, about 1933 it was reincorporated as Blyth & Co., Inc.

Q. And that is the present style of the firm?

A. That is the present style.

Q. What is the business of Blyth & Co., Inc.?

A. Dealing in investment securities.

Q. Are you engaged in the underwriting business? A. Underwriting.

Q. Do you do a brokerage business?

(Testimony of Charles R. Blyth.)

A. We do no brokerage business.

Q. Mr. Blyth, how long have you personally been engaged in some phase of the investment banking business?

A. All during the period of Blyth & Co. and its predecessor, Blyth Witter & Co., and since 1906—from 1906 to 1914 before Blyth Witter & Co. was organized. [1381]

Q. Were your activities in that connection in the State of California? A. Yes, largely.

Q. Was Dean Witter of the present firm or corporation of Dean Witter & Co. the same Mr. Witter that was associated with you?

A. He is the same.

Q. When did either you individually or the company with which you have been associated first become interested in the financing of the Applicant?

A. It was when Mr. Frank Drum was president of the Pacific Gas and Electric Company; 1919, I believe, when we purchased at that time $5,000,000 par value preferred stock of the Pacific Gas and Electric Company.

Q. Were you acquainted with Mr. Drum?

A. Very intimately.

Q. When was the New York office of Blyth & Co. established—I believe you do have a New York office, do you not?

A. We do. I don't know—I am just guessing. I can't remember these figures. It has been in operation 15 years anyway.

(Testimony of Charles R. Blyth.)

Q. During the period 1930 to 1935 who was in charge of the New York office of Blyth & Co.?

A. A man by the name of Lloyd Gilmore opened the [1382] New York office originally, and was joined by George Leib, who originally was from the San Francisco office, in about 1933, I think.

Q. Is Mr. Leib an officer or director, or both, of Blyth & Co.?

A. Vice-president and director.

Q. Is Mr. Charles Mitchell now associated with your organization? A. He is.

Q. What is his position?

A. He is chairman of the Board of Directors.

Q. When did he become associated with Blyth & Co., approximately? A. 1935.

Q. What position does Mr. Bernard W. Ford occupy?

A. He is a vice-president and director, and his residence is in San Francisco.

Q. And Mr. Loring R. Hoover?

A. He was at one time a vice-president for, I would say, less than two years—I am not sure as to that time, but I would say less than two years—and he is president of the New York office.

Q. Did he occupy such position during 1935?

A. Yes.

Q. Is Mr. Roy Shurtleff an officer or director of [1383] Blyth & Co.?

A. Vice-president and director, with his residence in San Francisco.

(Testimony of Charles R. Blyth.)

Q. After the purchase of the preferred stock issue in 1914, I believe which you testified concerning, from the Applicant, what was the next piece of business that your firm had with the Applicant?

A. We individually bought $10,000,000 in five-year convertible notes. I think that was the next year——

Q. (interposing) Applicant's Exhibit No. 42, I believe it is, shows that Blyth & Co. purchased——

A. (interposing) 1920.

Q. (continuing) —five year, 7 per cent collateral trust gold notes in the amount of, par value, $7,765,000 in May of 1920, is that correct?

A. That is correct.

Q. And the next piece of business which your firm did for the Applicant——

A. (interposing) Next was in 1923. We participated in an issue of $10,000,000 five and one-half's, which was underwritten by a group headed by the National City Company.

Q. Was Mr. Drum still president of the company, Mr. Blyth, in 1923?

A. No. Mr. Drum had died and Mr. Creed had become president in the meantime. [1384]

Q. Can you explain the circumstances surrounding the National City Company getting the leadership of the 1921 issue?

A. I can only give you what my opinion is. I don't know whether it is accurate or not, but I

(Testimony of Charles R. Blyth.)

think that Mr. Creed was impressed with the size and potency of the National City Company and impressed with the experience and extraordinary ability of Mr. George Weeks, who at that time was head of the, that is, at that time was connected with the National City Company, but not in San Francisco; and although Mr. Creed discussed with me on two or three occasions this particular piece of financing, and I had discussed it with him on the theory that I was acting as an advisor more than as a competitor in a competitive bid, finally I found out, to my surprise, that he had closed the deal with Mr. Weeks and we were out.

Q. After you had purchased the gold notes issued by the Applicant in 1920 were you of the opinion that you might head the next financing of the Applicant?

A. I felt certain we would.

Q. Was Mr. Drum president in 1920 when you purchased the gold notes.

A. He was president.

Q. So you first did financing for the Applicant under the presidency of Mr. Drum? [1385]

A. Yes.

Q. And you did some under the presidency of Mr. Creed? A. Right.

Q. What happened from 1920 to 1931 relating to who headed the Applicant's financing?

A. In the latter part of 1923 a second issue of $10,000,000 was underwritten by the same group and we participated as before.

(Testimony of Charles R. Blyth.)

Do you want me to give you all the amounts from then on?

Q. No. Did you have a second position in all of Applicant's financing during the period that the National City Company headed the business?

A. I don't recall whether we had second position or not, but we had a 20 per cent here in the underwriting.

The Examiner: In all the business in which National City headed it?

The Witness: Yes.

By Miss Calkin:

Q. In other words, your participation——

A. (interposing) Carried right on through.

Q. Where is the main office of Blyth & Co. located, Mr. Blyth?

A. I don't know. We operate with two head offices—I think we are the only such company that does—and we have [1386] a head office in New York and head office in San Francisco.

Q. In what state is Blyth & Co. incorporated?

A. A California corporation.

Q. Have you maintained your residence in California consecutively? A. Continuously.

Q. Has Blyth & Co. ever headed any underwriting syndicates in connection with the Pacific Lighting Corporation financing?

A. Yes. We have handled all of their business. I can't give you the amounts or times, but we have

(Testimony of Charles R. Blyth.)

handled all of their business for the last five or six years.

Q. Does that apply to the financing of the subsidiaries of that company also? A. Yes.

Q. During that period was Mr. C. O. G. Miller connected with Pacific Lighting Corporation?

A. He was the head of it at all times.

Q. So you have been well acquainted with Mr. Miller over a period of years?

A. Very intimately.

Q. How many members of the Applicant's Board of Directors do you know personally?

A. I know them all.

Q. Over what period of years would you say you have [1387] known them?

A. I have known some of them nearly 30 years; some of them for a less time.

Q. During the time Mr. Creed was president of the company did you make any effort to get the leadership of the Applicant's financing?

A. I think our efforts at that time were more confined to being admitted into the group than to try to displace the National City Company. Originally we were not in the group that was formed by Mr. Weeks under Mr. Creed's sponsorship, but we were as aggressive as, we knew how to be and they eventually thought it was a good idea to take us in.

Q. What happened after Mr. Hockenbeamer became president in reference to your efforts to get the leadership of this business?

(Testimony of Charles R. Blyth.)

A. Mr. Hockenbeamer was completely immune to any attack that we made on him for that objective, although he was always very friendly and I had had a very pleasant relationship with him.

At least I afterwards found out that I wasn't able to get in as close a business association with him as Mr. Russell, of Lazard Freres & Co., who was a personal friend of his.

Q. And did Mr. Weeks represent the National City Company in connection with Applicant's financing up to the time that National City Company went out of business? [1388]

A. At the beginning he did, but not continuously, because he went to London to represent the National City Bank, as head of its London Office, and I think Mr. Russell more or less took over for the National City Company after Mr. Weeks went to England.

Q. Was it your opinion that after Mr. Weeks left that Mr. Creed and Mr. Hockenbeamer carried on negotiations with the National City Company through Mr. Russell? A. I think they did.

Q. Would you say that the National City Company was primarily responsible for the participation of your company in Applicant's financing during the time that company headed Applicant's underwriting?

A. I think it was the result of judgment of other members of the group. I have in mind Rollins particularly.

(Testimony of Charles R. Blyth.)

Q. Was your position in Applicant's financing improved in 1926 or 1927?

A. As far as percentage went to the underwriting it was 20 per cent in 1926, 16 per cent in 1927, 15 per cent in 1928, 20 per cent in 1930, and 22½ per cent in 1931.

Q. During all of those periods did you have second position in the business?

A. I can't remember whether we had second, or where we were. I don't remember that.

Q. During the time the National City Company headed [1389] Applicant's business did you, or any member of your organization, put forth any efforts to get the leadership of first position away from the National City Company?

A. No; we would not do that.

Q. When were you first apprised of the fact that the Applicant intended to do some financing in the early part of 1935?

A. My recollection is that Stanley Russell came into my office one day and informed me that he was about to close an underwriting deal with Mr. Hockenbeamer.

Q. Prior to that time you had never had any conversation with Mr. Hockenbeamer in regard to who should head that syndicate?

A. Prior to our knowledge that Mr. Russell had become syndicate head we had attempted, of course, to get that business.

Q. Had you talked to Mr. Hockenbeamer?

(Testimony of Charles R. Blyth.)

A. Certainly.

Q. Had you talked to any other members of the Board?

A. I suppose I had—I don't recall definitely—but I don't believe I left any stone unturned to get that business after the National City Company went out of business.

Q. Did the persons that you contacted in an effort to get the business indicate to you that the leadership of your firm would be more favorable to them than that of Lazard [1390] Freres & Co.?

A. Yes. Some of the directors, in informal talks that I had with them, at least indicated that their sympathies were directed toward our being the head of the syndicate.

Q. But you first learned that Mr. Russell would head the business from a conversation you had with Mr. Russell? A. Correct.

Q. After you knew that Mr. Hockenbeamer had decided to give the business to Lazard Freres & Co. did you persist in your efforts to get the leadership?

A. No, I did not.

Q. Did you talk to Mr. Frank Anderson, who was then a member of the Applicant's Board of Directors, regarding Blyth & Co.'s desire to head Applicant's prospective financing in the early part of 1935?

A. Does your question refer to the time after I had been informed by Mr. Russell that he had taken over?

(Testimony of Charles R. Blyth.)

Q. Yes.

A. No; because I would not have thought it proper, after Mr. Russell had been given the business, to try to unseat him.

Q. Do you recall having received a telegram from Mr. Leib, on about February 15, 1935, in which he stated in substance that he believed that Mr. Miller and Mr. Anderson would be "pleased and keenly interested in helping obtain the [1391] senior position of your firm in the business"?

A. That sounds very much like a wire that Mr. Leib would have sent. I presume he did.

Q. Did you ever instruct Mr. Leib to contact Mr. Fogarty in an effort to get him to use his influence on behalf of Blyth & Co.? A. Never.

Q. Do you recall Mr. Leib having wired you that he would advise you as soon as he had heard from Mr. Fogarty?

A. I am sure he did wire such because we had a great deal of correspondence when he was endeavoring to talk with Mr. Fogarty.

Q. Do you know to what extent Mr. Leib conferred with Mr. Fogarty in regard to the desire of Blyth & Co. to head Applicant's underwriting syndicate? A. No idea at all.

Q. Were you of the opinion at the time you learned that Lazard Freres & Co. would get the leadership of Applicant's business that Mr. Russell's only close contact with the Applicant was with Mr. Hockenbeamer and that Mr. Russell had no

(Testimony of Charles R. Blyth.)

friends on Applicant's Board except Mr. Hockenbeamer?

A. I think I was aware of that fact.

Q. What do you know about how Brown Harriman & Co. got second position in the March 1935 issue of the Applicant?

A. I don't know anything of direct knowledge about it. [1392]

Q. Did you put forth any effort to get second position in the March 1935 issue?

A. If we were able to we wanted it.

Q. Did you get second position on the west coast? A. We did.

Q. Did you share in the management fee?

A. We shared in the management fee, I think, as to the second issue under Lazard's sponsorship. I don't recall whether we did in the first one or not.

Q. Was your participation in the management fee arranged with Mr. Hockenbeamer or with Mr. Russell?

A. It was arranged with Mr. Russell. [1393]

Q. What do you know about Mr. Hoover being in Washington with Mr. Fogarty and other utility executives who were there in connection with the Rayburn Bill, which later became the Public Utility Holding Company Act of 1935?

A. I knew he went down to be of assistance, because we thought if we could help the utilities generally in a bill which we personally didn't think was so very wise, that we were only doing a natural

(Testimony of Charles R. Blyth.)

thing and it might prove ourselves of value to the public utility industry, which we were anxious to do.

Q. Was Mr. Hoover then engaged in attempting to get Mr. Fogarty to use his efforts on behalf of Blyth & Co. in respect to Applicant's financing?

A. Not to my knowledge.

Q. Did you ever tell Mr. Elsey, who was then a member of Applicant's Board, that since Blyth & Co. was the most important western underwriter doing business with his bank that you expected Mr. Elsey to help you get the leadership of Applicant's financing?

A. During which time was that?

Q. That was in February of 1935.

A. If that is before I was informed of Mr. Russell having taken it over, I would say I probably did approach him on that, but I wouldn't have approached him after Mr. Russell informed me that he had been given the heading of the [1394] business.

Q. What did Mr. Elsey do, if anything, to your knowledge in an effort to assist you in getting the leadership of that business?

A. I have no knowledge of what he did. I assume he tried to be helpful, but I have no knowledge of it.

Q. After the 1935 issue had been sold and distributed did you make any comments as to the man-

(Testimony of Charles R. Blyth.)

ner in which Lazard Freres & Co. had handled the syndicate and distributed the securities?

A. Probably we did. We generally make some adverse comments, I think, on almost every syndicate.

Q. Were you of the opinion that had Blyth & Co. headed that piece of business that the distribution of the securities would have been more satisfactory to the Applicant?

A. We were certain of it.

Q. Do you feel that more San Francisco dealers should have been included in the selling group of the March 1935 issue? A. We certainly did.

Q. Did you call that to the attention of the Applicant? A. No, not that I recall.

Q. What efforts did your firm make between March 1935 and June of that year to improve your position in Applicant's underwriting syndicate? [1395]

A. Will you state that again? I don't think I quite got the question.

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. Any efforts that we made would have been made through Lazard Freres & Co. I don't recall what they were, but I am sure we made efforts to improve our position.

By Miss Calkin:

(Testimony of Charles R. Blyth.)

Q. But you did participate in the management fee in the June 1935 issue? A. Yes.

Q. And your negotiations in respect to participation were had with Mr. Russell?

A. Entirely.

Q. Do you recall the conversation regarding Applicant's financing which was had between yourself, Mr. Shurtleff and Mr. Leib, at which it was decided that Mr. Leib should cease his efforts to get Mr. Black to influence Mr. Hockenbeamer in respect to the leadership of Applicant's underwriting syndicates?

A. I don't definitely recall that, but it is quite likely that that was done. I think we were anxious not to have the waters muddied up in New York because we felt that the company's affairs were handled out here and its financing [1396] should be done out here.

Q. On or about September 6, 1935 did you write Mr. Hoover a letter in which you stated that you knew that he and Mr. Leib had "left no stone unturned in the North American Company to get their active cooperation in furthering our interest with Pacific Gas and Electric Company?"

A. I probably did.

Q. What did you mean by that statement?

A. Only this: That in the business I am engaged in it is our habit to contact everyone whom we think has any influence directly, or through friends, to divert financing in one way or another.

(Testimony of Charles R. Blyth.)

Q. You knew, of course, at that time that the North American Company was Applicant's largest stockholder and had two representatives on its Board of Directors? A. Yes.

Q. Do you recall having seen Mr. Black when he was in California the latter part of August or the first part of September of 1935?

A. I saw Mr. Black when he was out here—I can't say whether it was August 1935, but it was about that time.

Q. Was it prior to the time he became president of the Applicant? A. Yes; yes.

Q. What, if anything, did you say to him at that time [1397] regarding Blyth & Co.'s desire to head Applicant's financing?

A. I don't think I ever mentioned it.

Q. Did you write Mr. Leib a letter on April 14, 1935, in which you told him "nobody (referring to Mr. Black) could be nicer, more friendly or more anxious to help, but as I said before I think there is a North American policy which interferes with anyone of them going to the extreme limit that we would like"?

A. Yes. I am sure I wrote that.

Q. When you wrote this letter were you of the opinion that Mr. Black would like to have your firm replace Lazard Freres & Co. as syndicate manager?

A. I had no reason to believe that.

Q. What do you recall was said by Mr. Black

(Testimony of Charles R. Blyth.)

which would lead you to form the opinion that Mr. Black was very anxious to help.

A. Well, I think Mr. Black said exactly what any friend would have said under the circumstances. His remarks were probably assuring, but absolutely not binding. He was hopeful that we could get the business, but he didn't commit himself in any way about it.

Q. How long had you been acquainted with Mr. Black at that time?

A. We are talking about 1935 now?

Q. Yes,—before he became president of the Applicant. [1398]

A. Several years. I can't tell you exactly.

Q. Had your firm ever done any business for any of the companies with which Mr. Black was associated prior to his becoming president of the Applicant?

A. We had been associated with another firm in San Francisco who handled the San Joaquin Light & Power financing.

Q. Were you acquainted with Mr. Black at that time? A. No, I was not.

Q. After Mr. Hockenbeamer's death in November of 1935, and before the next financing by the Applicant in March of 1936, which piece of business was headed by your firm, what further was done by your company to get this business leadership?

(Testimony of Charles R. Blyth.)

A. I never said anything to Mr. Black directly about it, because I still considered it was Lazard Freres business. I am certain I had discussions with some of my close personal friends among the directors in the hope that something might lead to better things for Blyth & Co.; but they were purely informal and I never made any official approach to the company.

Q. Did you feel that with Mr. Hockenbeamer's death and Mr. Black's election as his successor that your leadership of the business was more probable?

A. I thought so. [1399]

Q. Did you ever discuss this matter with Mr. Chickering during this period? A. Yes.

Q. Mr. Chickering, I believe, has been attorney for your company for a period of time?

A. Yes; 25 years at least.

Q. Did he indicate to you whether or not, as a director of the Applicant, he was more favorable to the leadership of Blyth & Co. than that of Lazard Freres & Co. A. Yes, he did.

Q. Did he tell you that he and other directors had been dissatisfied from the beginning with Lazard Freres leadership?

A. He expressed his own individual opinion, but I don't recall that he ever mentioned how the other directors felt.

Q. Did he tell you that he had talked to Mr. Black about this matter? A. He did not.

(Testimony of Charles R. Blyth.)

Q. Did he tell you in substance that he would do everything in his power to get your firm the management of Applicant's financing?

A. I don't recall whether he did or not. I assume he did. It was rather in line with the expressions he made with reference to the handling of the company's business.

Q. What would you assign as a reason for Blyth & Co. succeeding Lazard Freres & Co. as syndicate manager of the [1400] $90,000,000 issue of March 1936?

A. I can only guess at that, because I have never been informed by any of the directors, or either by Mr. Black. I assume, from some of the remarks that were made to me by the directors, that they felt that a California organization, which they considered Blyth & Co. to be, would be more acceptable to them as their chief banking organization than somebody located in New York.

Q. Prior to the date of this issue Mr. Mitchell had become associated with your New York office, had he not? A. He had.

Q. Did Mr. Mitchell ever inform you that he had conferred with Harrison Williams regarding the desire of Blyth & Co. to manage the next piece of Applicant's financing?

A. I don't know whether he did or not, but I assume that he did.

Q. Mr. Blyth, I hand you, for the purpose of refreshing your recollection, certain correspondence

(Testimony of Charles R. Blyth.)

which purports to have been exchanged between yourself and Mr. Mitchell.

A. (Examining correspondence.) Yes. I remember that.

Q. In those letters Mr. Mitchell did advise you, did he not, that he had had a conference with Mr. Williams? A. Yes, he did.

Q. What did he tell you that Mr. Williams had said at the conference in regard to the leadership of underwriting [1401] syndicates by Blyth & Co.

A. I don't know what he said, but I am certain that Mr. Williams never committed himself in any way because he wasn't able to.

Q. Do you know Mr. Williams personally?

A. Yes.

Q. How long have you known him?

A. I think I first met him in 1928 or 1929.

Q. How close is your acquaintanceship or friendship with Mr. Williams?

A. Well, reasonably close. I wouldn't say I am an intimate friend of his.

Q. Has your firm had substantial participations in the financing of the North American Company or of its subsidiary companies?

A. We have had participation, but whether you call them substantial or not I don't know. They have been about the same in amount as various other organizations of our kind.

Q. Do you have what you consider a historical

(Testimony of Charles R. Blyth.)

interest in the financing of certain subsidiaries of the North American Company? A. No.

Q. Who has headed most of the syndicates in which you have participated in connection with the financing of the North American Company or its subsidiaries? [1402]

A. Dillon Read & Co.

Q. I believe you testified that you never talked to Mr. Black after he became president of the company in regard to your firm——

A. (interposing) I am very certain I never did.

Q. What was the first knowledge you had concerning the financing which was done in March of 1936?

A. Mr. Black invited me to come down to his office one day?

Q. When was that?

A. I don't remember, but it was some time preceding the time when this first issue of $90,000,000 was offered. He told me that they had been discussing among themselves their financial plans and determined to offer us the leadership of their underwriting if we wished it.

Q. Who made up the list of underwriters for the syndicate which purchased the $90,000,000 issue?

A. I think, in the first instance, I probably made them up, and then had a general discussion with Mr. Black, as we always do in any of these financial operations.

(Testimony of Charles R. Blyth.)

Q. Was there some discussion between you and Mr. Black as to who should participate in that syndicate, and the amount of their respective participations?

A. I don't recall whether the list was absolutely made up by myself or whether we had suggestions from the east, or [1403] whether Mr. Black was the one who first had the idea, but I am quite clear that we really were the ones who submitted the suggested list for his approval because that is what we always do do.

Q. What do you mean by "suggestions from the east"? A. From our New York office.

Q. Who suggested the name of Dillon Read & Co. as a member of that syndicate?

A. I think that our reason for including Dillon Read & Co. in that case was to get added banking strength behind the underwriting. After all, it was a pretty sizeable issue at that time. There hadn't been very many of that size put out. It was the first one we had put out for the Pacific Gas and Electric Company and we were naturally not going to take any chances, if a market slip-up took place, on being weak in the underwriting end of the thing.

Q. Who suggested the name of Dillon Read & Co. initially?

A. I don't know whether I did, or whether our New York office did. Somebody in our own organization did. Nobody else would.

(Testimony of Charles R. Blyth.)

Q. Who suggested the name of Kuhn Loeb & Co. and Morgan Stanley & Co.? A. Same thing.

Q. Who determined the participations of the various [1404] syndicate members?

A. We would in the first instance schedule a list and probably submitted it to Mr. Black. I don't recall definitely, but I assume we did that.

Q. Do you recall whether the names of any of the syndicate members were included at the suggestion of Mr. Black?

A. I think there were none. I think we had the list ourselves in the first instance and I think Mr. Black agreed that our list was satisfactory. That is the best recollection I have.

Q. Were there any houses included which had not been included under the leadership of Lazard Freres & Co.

A. Both Mr. Black and I felt it was highly desirable to have more local distributing power and we included four or five local firms in California.

Q. I hand you a copy of Applicant's Exhibit No. 42 and call your attention to the list of underwriters in the March 1936 issue. Will you state which of those houses, Mr. Blyth, are so-called California houses?

A. Schwabacher & Co., Brush, Slocumb & Co., William Cavalier & Co., Elworthy & Co., Mitchum Tully & Co. and Bankamerica Company. I think that is all.

Rollins was in before, I believe.

(Testimony of Charles R. Blyth.)

Q. Is E. H. Rollins & Sons a California house?

A. No. It is an eastern organization. [1405]

Q. Was there any understanding between you and other syndicate members as to whether or not the participation of Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. in this syndicate would give them a historical interest in the future financing of the Applicant?

A. It was understood it would not.

Q. You mean you gave them to understand——

A. (interposing) That they would not have any continuing interest, that there would not be any continuing interest in any of those three concerns you mentioned.

Q. Where were the negotiations with respect to the March 1936 issue carried on, Mr. Blyth?

A. San Francisco.

Q. Between whom?

A. Mr. Black and myself.

Q. What contracts, if any, did you have with any representatives of the North American Company in connection with the 1936 issue?

A. No contracts at all.

Q. You had never discussed with any representatives of the North American Company any phase of this piece of financing?

A. Never mentioned it to any of them.

Q. Do you know whether or not your representatives in New York carried on any negotiations

(Testimony of Charles R. Blyth.)

with representatives of [1406] the North American Company?

A. No, I don't know. I can't say. But I know of no reason why they should have.

Q. Did they communicate the results of any negotiations to you? A. No, they did not.

Q. You never had any discussion of any kind with Messrs. Williams, Fogarty or Freeman pertaining to the March 1936 financing of applicant?

A. None whatever.

Q. With respect to the April and October 1936—I believe it is May and October 1936 issues of the Applicant, which were purchased by an underwriting syndicate headed by your company, with whom did you carry on the negotiations in connection with those two issues?

A. Exactly the same as in the $90,000,000 issue.

Q. What conferences, if any, did you have with Messrs. Williams, Fogarty and Freeman prior to the sale of the securities by the Applicant to the syndicates headed by you?

A. No conversations or communications of any kind.

Q. Do you know whether or not your New York representatives carried on any negotiations in respect to the last two 1936 issues with representatives of the North American Company?

A. Not of my knowledge. I see no reason why they should have. [1407]

(Testimony of Charles R. Blyth.)

Q. Who made up the list of underwriters for these two issues?

A. They were made up in the first instance in our own office.

Q. Did you request Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. to participate in these issues? A. I did not.

Q. Did they ask that they be given a participation in these two pieces of business?

A. They did not because the understanding was in the $90,000,000 issue that that didn't form any precedent.

Q. In connection with the March 1936 issue did you receive any request from any representative of the North American Company to include Dillon Read & Co. in the syndicate?

A. No request at all.

Q. Why were these three houses not requested to participate in the last two issues in 1936?

A. The reason why they were participating in the $90,000,000 issue was to give added strength to the underwriting. In the subsequent issues there was no such need, and they did not contribute any distributing strength.

Q. With whom did you carry on negotiations relative to the private placement of the $15,000,000 bond issue which was sold in February of 1938?

A. Mr. Black. [1408]

Q. Did you have any communications with any

(Testimony of Charles R. Blyth.)

representatives of the North American Company in respect to that issue? A. None whatever.

Q. Is there any understanding between you and Mr. Black as to the management of future financing by the Applicant? A. None at all.

Q. Who, in your opinion, was responsible for the selection of Blyth & Co. to head the March 1936 syndicate?

A. I would imagine the Executive Committee of the Pacific Gas and Electric Company.

Q. Have you at any time, in connection with Applicant's financing since 1936, carried on any negotiations in respect thereto with any representatives of the North American Company?

A. None whatsoever.

Q. During the period that Lazard Freres & Co. headed the business who carried on the negotiations with the Applicant?

A. I suppose Mr. Russell did. As far as I knew he did.

Q. You had no negotiations with Mr. Hockenbeamer in 1935? A. No.

Q. You don't know where those negotiations were carried on?

A. I only know Mr. Russell was out here each time and I assume that they were carried on here.

[1409]

Q. And you have no knowledge of your New York office having carried on any negotiations with respect to the issuance of the securities, and the

(Testimony of Charles R. Blyth.)

price, the spread and similar matters with representatives of the North American Company?

A. I am sure they never did.

Miss Calkin: I think that is all.

The Examiner: Mr. Phleger?

Mr. Phleger: No questions.

The Examiner: Mr. Troy, do you want to ask this witness any questions?

Mr. Troy: Well, I couldn't hear what he was saying, what the questions were. I don't know anything about what he was testifying to.

The Examiner: This is Mr. Blyth, who is head of the underwriting house that has been handling a number of the issues of the Pacific Gas and Electric Company, the Applicant here.

Mr. Troy: Yes. Is it he that Mr. Chickering testified to that he wanted to get the underwriting for Mr. Blyth when it was being given to that French firm in New York?

The Examiner: That is right.

Mr. Troy: I have known of the firm of Blyth & Co. for many years.

Have you any document that I could look over from which [1410] I might ask questions? I didn't hear, couldn't hear any of his testimony.

The Examiner: There have been no documents offered in connection with Mr. Blyth's testimony.

Mr. Troy: I suppose it was simply in connection with the underwriting?

The Examiner: That is right.

(Testimony of Charles R. Blyth.)

Cross Examination

By Mr. Troy:

Q. Mr. Blyth, you may be able to give some information on something that puzzles me. When you float an issue of stock or bonds it is frequently stated that you are going to stabilize the issue.

A. Yes.

Q. What does that mean?

A. If you are dealing in any commodity and you throw a large amount of it on the market you will depress the market below the point which it normally should go—whether it is apples, potatoes, bonds or shares of stock—and you need some support in the market to balance that load until it can be distributed through the consumers.

Q. That is to say, you buy stock that may be offered.

A. If some is offered you would buy it.

Q. You may sell at times? A. Yes. [1411]

Q. Or you may be both on the buying and selling end? A. Right.

Q. And that is what is commonly called "rigging the market"?

A. "Rigging the market" is where you attempt to accumulate a certain block of securities to raise the price and sell out to the unsuspecting public and thereby get an improper profit.

But stabilizing the market is simply to prevent a deluge of any commodity going on the market and

(Testimony of Charles R. Blyth.)

improperly depressing it. Everybody is protected by that procedure as against being harmed, which is the case in the so-called "market rigging".

Q. And then——

Mr. Phleger (interposing): Just a moment. This is all very interesting, but we have got to pay for this record, and I assume everybody's time is worth something, so I suggest that this line of questioning is absolutely immaterial and irrelevant, not to say incompetent, and not within the order of the Commission, and that it might very well be carried on after our adjournment.

The Examiner: Yes.

By Mr. Troy:

Q. Take, for instance——

The Examiner: Just a moment. Mr. Troy, you heard the objection, did you not? [1412]

Mr. Troy: No.

The Examiner: An objection was made similar to the one made previously to certain questions you propounded this morning; that is, that this may be interesting to you, but it is not within the issues of this proceeding, nor within the authority of the order the Commission entered permitting you to participate. Unless your questions are within the issues of this proceeding, and within the purview of the order, I would have to sustain any objections to this line of inquiry.

(Testimony of Charles R. Blyth.)

Mr. Phleger has been kind enough to suggest that you might pursue this inquiry of Mr. Blyth at another time and not as a part of this record.

The Witness: I don't agree about the later discussion.

Mr. Troy: Has Mr. Phleger the right to ask questions that are not pertinent to the inquiry, or to suggest testimony to the witness?

The Examiner: I think that is another issue also. I think if he asks questions that are improper, and an appropriate objection is made, the objection would be sustained if I could see it that way.

Mr. Troy: If he asks questions in a way that is suggesting the testimony to the witness?

The Examiner: I understand leading questions, I suppose, as sometimes called, are likewise objectionable and if there [1413] is an objection made the objection would be sustained and the question would probably be reframed.

Mr. Troy: Hereafter I will have to watch him and object and try to keep the record straight.

The Examiner: All right. That will be fine.

If there are no further questions you may be excused, Mr. Blyth. Thank you.

(Witness excused.)

The Examiner: Have you any further testimony on behalf of the Commission?

Miss Calkin: Not at this time, Mr. Examiner. I intend to confer with my superiors in Washington in regard to Mr. Fogarty and Mr. Freeman, but I understand that if the Commission or the staff there feels it is desirable to have the testimony of those witnesses that they will be produced by the Applicant.

Is that correct?

Mr. Phleger: Well, I might state our position in this way: We believe that all of the issues made by our application have been very fully explored and that any testimony which might be produced hereafter would be merely cumulative and corroborative and it is, therefore, our desire that the matter be now submitted.

If the Commission should desire that additional testimony be had, of course, the matter can be set down for further [1414] hearing.

If that is done it is our desire, which I ask that the record show, that those further proceedings be held before the Examiner who has heard the testimony and evidence up to this time. If such hearings are held in the east it would be our desire that the Examiner go there to hear the testimony, or if that were not possible that the testimony of the eastern witnesses, if such testimony is taken, be taken by way of deposition and incorporated in this record so that the Examiner who has heard the evidence to date might make a report upon all of the evidence.

It is also our desire, in the event that, on reviewing the record, the Commission should have any hesitancy about granting that there be an Examiner's report, if the Applicant is so advised we would like to have an opportunity thereafter to argue the matter before the Commission.

The Examiner: I understand, as far as Miss Calkin's statement is concerned, that the Applicant would have no objection to calling these other two New York directors of the company as its witnesses, rather than Commission witnesses, if the Commission feels that their testimony is desirable or necessary.

Mr. Phleger: If that is convenient to the Commission we would be glad to do that.

The Examiner: The rest of your statement is quite clear [1415] as to what you desire.

I assume, then, that you will be informed from Washington about what the Commission's desires are and at that time you can elaborate upon, if you want to, this statement and renew your motion that we have previously discussed, and the Commission will issue its order.

Whether or not the Commission is going to grant your application before they act upon the rest of your motion, to wit, the preparation of the Trial Examiner's findings and report, I don't know; but they will consider the record as it appears before them, or is presented by the staff of the Public Utilities Division when they consider your motion. If they have any questions they will ask for the

entire record and they can examine such portions of it as may appear appropriate before acting on your request and motion.

You will be informed, I am sure, of whatever they determine is proper to be done and whatever steps are necessary to protect the Applicant's rights.

Under those circumstances I presume the hearing should be continued, not closed, to an indefinite date and before there is any resumption of the hearing adequate notice will be given to all parties of the time and place in a reasonable time so that they can accommodate themselves to the time and place where it is directed to be resumed.

Mr. Phleger: I take it that our time in which to make [1416] various requests and motions, in accordance with the rules, will not be deemed to start running until the case is officially submitted and we are so advised?

Miss Calkin: Not until the record is closed.

The Examiner: That time will not begin to run until the hearing is closed. Thereafter, I am satisfied, from my experience with the Commission, that they will not preclude you from making any appearance, or making motions that you desire even though the time may have elapsed.

Mr. Phleger: I am referring particularly to the request for special findings which must be made within five days.

The Examiner: That time will not begin to run

until the hearing is closed and you will be notified before that occurs.

I should also like the record to show that Mr. Rowell, Attorney for the Railroad Commission of the State of California, who made a statement at the opening session of this hearing, has been present at each successive session and a regular attendant at these proceedings.

The hearing is continued to an indefinite date to be resumed upon order of the Commission.

(Whereupon, at 3:10 o'clock p. m., the hearing in the above-entitled matter was continued subject to be resumed on order of the Commission.) [1417]

Proceedings

The Examiner: This is the hearing in the matter of the application of Pacific Gas and Electric Company and others under Section 2-A-8 and 3-A-1 and 2 of the Public Utility Holding Company Act of 1935.

Prior sessions of this hearing have been held in San Francisco, and pursuant to order of the Securities & Exchange Commission, the hearing is to be resumed here today for the purpose of taking further testimony.

The reporter has noted the appearances, I believe.

If you are ready to proceed, you may call your next witness, Mr. Phleger.

Mr. Phleger: Mr. Fogarty.

Whereupon:

JAMES F. FOGARTY

called as a witness by and on behalf of the Applicant, being first duly sworn, was examined and testified as follows:

Mr. Phleger: I think it might be desirable to have the record show I have handed the Examiner and counsel for the Commission a memorandum pointing out certain typographical errors in the transcript which we ask to be corrected as indicated.

The Examiner: Unless there is any objection on the part of counsel for the Commission, the request will be granted. I am already familiar with some of them, and they [1419] are errors more or less obvious.

Direct Examination

By Mr. Phleger:

Q. Mr. Fogarty, will you give for the record your full name and residence.

A. James F. Fogarty, 106 Brixton Road, Garden City, Long Island.

Q. What is your occupation?

A. I am Chairman of the Executive and Finance Committee of the North American Company.

Q. How long have you been connected with the North American Company?

A. Since November, 1902.

Q. Will you review briefly the various capacities in which you have served in the North American Company.

(Testimony of James F. Fogarty.)

A. I entered the employ of North American Company as a stenographer, become assistant secretary, assistant treasurer, secretary, vice-president, president, and Chairman of the Executive and Finance Committee.

Q. What position did you hold in 1925?

A. Vice-President.

Q. And in 1930? A. Vice-President.

Q. When did you become president?

A. January, 1934. [1420]

Q. How long did you occupy the position of president?

A. From January, 1934 until November 1, 1939.

Q. Is it correct to say that almost your entire business life has been with the North American Company? A. It is.

Q. What other directorships and affiliations, business affiliations, have you?

A. I am director of North American Light & Power Company, the Wisconsin Electric Power Company, North American Utility Securities Corporation, West Kentucky Coal Company, the Detroit Edison and Pacific Gas and Electric Company.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. In 1934.

Q. I call your attention to Applicant's Exhibit 16, Mr. Fogarty, and by reference to that exhibit can you give the date of your election as a director of the Pacific Gas and Electric Company.

(Testimony of James Fogarty.)

A. Yes. I said 1934; that should have been 1935. According to this record I was elected a director on December 18, 1935.

Q. And have continued as a director ever since?

A. That is correct.

Q. Did you know Mr. F. T. Elsey in his lifetime?

A. I met Mr. Elsey once when I was in San Francisco. [1421]

Q. Do you know Henry D. Nichols?

A. I do not.

Q. Did you know W. H. Crocker in his lifetime?

A. I met Mr. Crocker once or twice in San Francisco.

Q. Never met him in New York, did you?

A. No.

Q. Were your contacts with Mr. W. H. Crocker or Mr. Elsey of a business nature?

A. It is my recollection that my meeting with Mr. Elsey took place at an Executive Committee meeting of Pacific Gas and Electric Company which was held at a time at which I happened to be in San Francisco and I was invited to sit in at that meeting. I had no other contact with him. And I met Mr. Crocker outside of the office of the Pacific Gas and Electric Company on the one or two occasions when I did meet him.

Q. Did you ever discuss P. G. & E. affairs with him? A. Did not.

(Testimony of James Fogarty.)

Q. Did you ever discuss P. G. & E. affairs with Mr. Elsey? A. No, I did not.

Q. Do you know W. W. Crocker?

A. I do.

Q. What were the circumstances under which you became acquainted with him?

A. I met Mr. W. W. Crocker when I was a guest at [1422] Bohemian Grove.

Q. Did you ever have any business contact or business relationship with him?

A. I have not.

Q. Did you ever discuss company business with him? A. I have not.

Mr. Phleger: I will make a statement for the record the Bohemian Grove is a grove of redwood trees located on the Russian River about 75 miles north of San Francisco near the ocean. It is the property of the Bohemian Club, which is a social club in San Francisco. Each year in approximately the last two weeks of July an encampment is held there, at which time the members of the Club, both resident and non-resident, and guests invited, hold an encampment which is marked by various intellectual, artistic, and other entertainment.

The Examiner: You are a member of that organization, too, Mr. Phleger, I understand?

Mr. Phleger: I am. I think most every one in San Francisco is.

The Examiner: Every one that can be.

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(Testimony of James Fogarty.)

By Mr. Phleger:

Q. Who is Mr. Gruhl?

A. At the time of his death in January, 1933, Mr. Gruhl was president of the North American Company.

Q. Who is Mr. Dame? [1423]

A. At the time of his death in December, 1933 Mr. Dame was president of the North American Company.

Q. He had succeeded Mr. Gruhl?

A. Yes. He had been president and was followed by Mr. Gruhl as president. At the time Mr. Gruhl became president, Mr. Dame became Chairman of the Board. Upon Mr. Gruhl's death Mr. Dame resumed the office of president.

Q. You succeeded to the presidency upon the death of Mr. Dame? A. I did.

Q. Who is Mr. Doolittle?

A. Mr. Doolittle was Vice-President of the North American Company.

Q. Is he now living? A. Yes.

Q. Is he connected with the North American Company?

A. No, not in any official capacity.

Q. He resigned from active service?

A. Yes.

Q. About when? A. 1933.

Q. Who is Herbert C. Freeman?

A. He is Vice-President of North American Company.

Q. And is at this time? A. Yes. [1424]

(Testimony of James Fogarty.)

Q. Do you know Silas H. Palmer?

A. I do not.

Q. Did you know J. J. O'Brien in his lifetime?

A. I did.

Q. Who is he?

A. He was president of Standard Gas & Electric Company.

Q. Does your company have any business or other connections with the Standard Gas & Electric Company?

A. No, except that some of our Wisconsin operating subsidiaries may have power interchanges.

Q. Your company never has engaged in any joint venture or otherwise with the Standard Gas & Electric Company? A. It has not. [1425]

Q. It has no understanding or arrangement with respect to pooling of voting interests in companies in which they may have stock holdings?

A. It has not.

Q. Did you ever discuss Pacific Gas & Electric affairs with Mr. O'Brien?

A. I did not. I might say for the purpose of the record that I met Mr. O'Brien two or three times.

Q. And who is A. E. Wishon?

A. He was president of—vice president of San *Joquin* Light & Power Corporation, which was a subsidiary of Western Power Corporation at the time the North American Company acquired control of Western Power Corporation in the latter part of 1925.

(Testimony of James Fogarty.)

Q. Do you know Charles K. McIntosh?

A. I do not.

Q. Never met him? A. No.

Q. Did you ever know Frank B. Anderson, in his life time? A. I did not.

Q. Never met him? A. No.

Q. Do you know Mr. Allen L. Chickering?

A. I do. [1426]

Q. How long have you known him?

A. Perhaps four or five years.

Q. What has been the extent of your contacts with him?

A. I met him perhaps three or four times in the course of that period.

Q. Were those business meetings?

A. No, except to the extent of my meeting him at the Executive Committee meetings of the Gas & Electric Company, to which I referred you before, might have been business meetings.

Q. The other contacts have been purely social, have they? A. Yes.

Q. Do you know Norman B. Livermore?

A. I do not.

Q. Have you ever met him?

A. Not to the best of my recollection.

Q. Do you know John D. McKee?

A. No.

Q. Ever met him?

A. I do not recall that I have.

Q. Do you know Mr. C. O. G. Miller?

(Testimony of James Fogarty.)

A. I do.

Q. How long have you known Mr. Miller?

[1427]

A. Since some time after the North American Company acquired the interest in Pacific Gas & Electric Company.

Q. That would be some time after 1930?

A. That's right.

Q. State what the extent of your contacts with Mr. Miller have been?

A. I have met Mr. Miller on two or three occasions, perhaps, in New York, and I believe he was at the meeting of the Executive Committee at the Pacific Gas & Electric Company, to which I referred. My other meetings with him were while at Bohemian Grove, and on my return from the Grove to San Francisco, I stopped in to talk with him on two or three occasions, perhaps.

Q. Except for the one incident when you met Mr. Miller at the meeting of the Executive Committee in San Francisco, have your meetings with Mr. Miller been social? A. Yes.

Q. And at those meetings did you discuss business affairs, including P. G. & E.?

A. No, I do not recall that I ever did.

Q. Do you know Mr. D. H. Foote?

A. Yes.

Q. How long have you known him?

A. I met him first some time after the North

(Testimony of James Fogarty.)

American Company acquired interest in the Pacific Gas & Electric [1428] Company in 1930.

Q. What was the extent of your contacts with him?

A. Very few and very brief, perhaps two or three times, for a few minutes at a time, simply because I happened to be in the office of the Pacific Gas & Electric Company.

Q. Purely personal, were they?

A. Yes, and on a couple of occasions I had lunch with a number of the officers of the Pacific Gas & Electric Company, including Mr. Foote.

Q. Did you ever discuss business matters with him?

A. Well, at those luncheons, some matters of the Pacific Gas & Electric Company were discussed.

Q. In a formal way?

A. No, entirely informally.

Q. Cursory discussion? A. Yes.

Q. Do you know Mr. Phil M. Downing?

A. I do.

Q. When did you first meet him?

A. Some time after the North American Company acquired its interest in the Pacific Gas & Electric Company in 1930.

Q. State the extent of your contacts with Mr. Downing.

A. I have seen Mr. Downing in New York perhaps two or three times and stopped in a few minutes while he was in [1429] the East, and per-

(Testimony of James Fogarty.)

haps two or three other times I saw him in the office of the Pacific Gas & Electric Company in San Francisco.

Q. Would you describe your meetings with him as social rather than business?

A. When I was in the office of the company in San Francisco I stopped in to talk with him and we discussed some general matters of the company. His purpose, when I saw him in New York, the occasion for that was his merely dropping into the office for a few minutes when he happened to be here.

Q. The talks which you have just referred to with Mr. Downing were for the purpose of your obtaining information, were they, about the company? A. Yes.

Q. You did not discuss company policy and your attitude with respect to matters then under consideration by the Pacific Gas & Electric Company?

A. No, I did not.

Q. Did you make any requests or suggestions to him as to what the policy or action of the Pacific Gas & Electric Company should be?

A. I did not.

Q. Do you know Mr. John P. Coghlan?

A. I do. [1430]

Q. How long have you known him?

A. I met Mr. Coghlan first some time since 1930.

Q. What has the extent of your contacts with

(Testimony of James Fogarty.)

him, what has been the extent of your contacts with him?

A. About the same as those I described were my contacts with Mr. Downing.

Q. A few times in New York when he dropped in socially, and when you were in San Francisco and you dropped in and talked with him?

A. I did.

Q. Have you ever suggested the name of any director of the Pacific Gas & Electric Company for election by it? A. I have not.

Q. Did you ever participate in the election of any director of the Pacific Gas & Electric Company? A. I have not.

Q. Have you ever suggested employment by the Pacific Gas & Electric Company of any individual?

A. I have not.

Q. How many meetings of the Board of the Pacific Gas & Electric Company have you attended?

A. None.

Q. You have mentioned already your presence at a meeting of the Executive Committee of the company. Will you state the circumstances under which that took place? [1431]

A. I happened to be in the office of the company in San Francisco on the day on which the Executive Committee was to meet. So Mr. Black invited me to sit in at the meeting.

Q. What was the extent of your participation in that meeting? A. None.

(Testimony of James Fogarty.)

Q. Simply sat there and——

A. Listened to what went on.

Q. ——the discussion that went on?

A. Yes.

Q. Were your views as to the matters which were considered at that meeting requested?

A. They were not.

Q. Could you fix the date of that meeting?

A. It may have been in 1936 or '37.

The Examiner: Was that your question, Mr. Pheleger? Did you say, "Could you fix it" or "did you fix it"?

Mr. Phleger: I said, "Could you fix it".

By Mr. Phleger:

Q. Have you ever made a business trip to California for the purpose of obtaining information respecting the Pacific Gas & Electric Company?

A. I did. [1432]

Q. When was that? A. 1936.

Q. Other than that occasion, have you ever made a business trip to California to either talk with the officers or investigate its affairs?

A. Not for that purpose.

Q. Can you state the extent of your activity in 1936 when you made the trip which you just mentioned?

A. I spent a couple of days in San Francisco, then went up to Bohemian Grove, returned to San Francisco for a day or two, returned to the Grove

(Testimony of James Fogarty.)

for the following week-end, and I believe I spent the Monday following the close of the Grove encampment in San Francisco.

Q. It would be fair to say, then, that the extent of your investigation at that time amounted to about three days' time?

A. I wouldn't say my trip was made for the purpose of any investigation. During the days in which I was in San Francisco, I talked with Mr. Black and other officers of the Pacific Gas & Electric Company, and also visited with some other men in San Francisco whom I happened to know.

Q. That was the first time that you were in San Francisco following your election as President of the North American Company? A. Yes.

[1433]

Q. And as a director of the Pacific Gas & Electric Company, was it not? A. It was.

Q. And was for the purpose of familiarizing yourself with the company, and to meet some of its officers and directors? A. That is correct.

Q. Do you recall the occasion of the acquisition by the North American Company of stock control of Western Power Corporation? A. I do.

Q. When did that take place?

A. In September or October, 1925.

Q. What form did that transaction take?

A. An offer of common stock of North American Company for common stock of Western Power Corporation.

(Testimony of James Fogarty.)

Q. At the time of that transaction did Western Power Corporation, have stock control of the Western Power Company and San Joaquin Light & Power Corporation?

A. It did, also Midland Counties.

Q. Midland Counties. Following the acquisition by North American of control of Western Power Corporation, as you have just testified to, did the North American Company maintain close contact and supervision over the affairs of that company and its subsidiaries? [1434] O. It did.

Q. Can you describe——

A. May I say that it maintained a close contact with the management of those companies, followed its operations, but did not supervise the management as such.

Q. What contact or supervision did the North American Company have, or give, over the affairs of those companies?

A. The North American Company arranged the financing of those companies.

Q. Where were the issues of bonds that those companies sold in that period, sold?

A. By California bankers, Blythe-Wedder & Company, and Pierce, Fair & Company.

Q. Did the North American Company participate in the negotiations covering the sale of those securities? A. It did.

Q. And were those negotiations held here in New York?

(Testimony of James Fogarty.)

A. They were concluded in New York. The discussions leading up to them were begun by me in California.

Q. Concluded in New York, however, in the North American offices? A. That is correct.

Q. Did the North American Company extend credit to the operating subsidiaries of Western Power Corporation?

A. It did, through Western Power Corporation.

[1435]

Q. Can you state the period and extent of that financial accommodation?

A. North American acquired, as I stated, the control of Western Power Corporation in September or October of 1925, and disposed—and Western Power Corporation disposed of its interests in those operating subsidiaries in June, 1930. During that period the advances to the operating subsidiaries of the Western Power amounted to probably $19,000,000.

Q. That advance was liquidated, was it not, in connection with the acquisition by Pacific Gas & Electric Company in 1930 of the securities of the Great Western and San Joaquin Company owned by Western Power Corporation, were they not?

A. That is correct.

Q. What, if anything, did the North American Company have to do with the budget of the operating companies during the period 1925 to 1930?

(Testimony of James Fogarty.)

A. North American Company, officers and organization, went over the budget of those companies with the officers of those companies.

Q. They were submitted to the North American Company before they were adopted or put into effect, were they not?

A. Yes. All principal items were discussed.

Q. Now, with respect to construction, were proposals [1436] for the construction of plants and properties, where they were large in amounts, submitted to North American before they were undertaken by the operating subsidiaries?

A. You mean proposals to build a plant and make the expenditure?

Q. Yes. A. Yes.

Q. Was the North American Company consulted by the operating subsidiaries with respect to rate matters and changes during that period?

A. Yes; those matters were discussed with the officers of the North American Company.

Q. Before they were—— A. Yes.

Q. —put into effect? A. Yes.

Q. What, if anything——

A. That is, those of importance. There may have been minor adjustments that——

Q. What consultation or discussion, if any, were had between the operating subsidiaries and the North American Company during this period respecting sales?

A. Sales of electric energy, do you mean?

(Testimony of James Fogarty.)

Q. Yes, sales promotion methods, I am referring to.

A. I do not recall any particular sales promotion [1437] programs that were proposed by those companies, but their general procedure with respect to increasing the business of the company, advertising, activities looking toward that, were discussed in general.

Q. Were these operating companies given the benefit of North American knowledge and advice with respect to sales activities generally in the industry?

A. Yes; it had been our policy to make available to all our subsidiary companies the experience and knowledge of our other subsidiaries.

Q. And that was done in this instance?

A. It was.

Q. Were these operating utilities given the benefit of group purchasing contracts of the North American Company?

A. At that time there was in effect what we referred to as a quantity discount contract, under which the operating subsidiaries made their own purchases, and those purchases were applied in the aggregate for the purpose of determining discounts, and operating subsidiaries received the benefit of the discounts based on the aggregate purchases.

Q. Did the Great Western and San Joaquin

(Testimony of James Fogarty.)

have the benefit, and avail themselves of, the procedure you mentioned? A. They did.

Q. Do you know whether or not the officers of these operating subsidiaries were members of and participated in [1438] the activities of what is known as the Station Advisory Committee?

A. I believe members of their engineering organization did participate in the activities of the Station Advisory Committee.

Q. What is the Station Advisory Committee?

A. That is a committee consisting of technical men in the organizations of the various subsidiary companies who met for the purpose of discussing and exchanging views with respect to operating on technical matters.

Q. Do you know whether or not these operating subsidiaries during this period were given the benefit of accounting advice by North American?

A. I do not recall any specific instance, but I am sure that if any questions arose in their minds, that the knowledge and experience of our organization would have been available to them.

Q. Is it fair to say that the relation between North American Company and Great Western Power Company and the San Joaquin Light & Power Corporation and Midland Counties Company during this period were substantially the same as the relationship between North American Company and its other operating subsidiaries?

(Testimony of James Fogarty.)

A. It is.

Q. You have testified and the record shows that some [1439] time in the first part of 1930 the Pacific Gas & Electric Company purchased from North American Company its holdings in these operating subsidiaries. Do you know whether or not this relationship between North American and these operating subsidiaries that you have just testified, terminated then? A. It did.

Q. Do you know Mr. James B. Black?

A. I do.

Q. How long have you known him?

A. Since about the time of the negotiations for acquisition of control of Western Power Corporation in the latter part of 1925.

Q. State what your subsequent contacts have been with Mr. Black?

A. I saw Mr. Black, spent sometime with him in the late Summer of 1926, when I was in San Francisco to look into the financing situation of the Western Power Corporation subsidiaries. The following year Mr. Black came to New York to become Vice President of the North American Company, and remained in that capacity until November or December, 1935, when he resigned to become President of Pacific Gas & Electric Company.

Q. So that Mr. Black was an officer of the North American Company from 1927 to 1935? [1440]

A. That is correct.

(Testimony of James Fogarty.)

Q. A period of approximately seven years.

A. Or eight.

Q. What position did Mr. Black hold in the North American Company during that period?

A. Vice President.

Q. Was he a member of the Board of Directors of the North American Company?

A. He was not.

Q. Was he a member of the Executive or Finance Committee of the North American Company? A. He was not.

Q. What were Mr. Black's duties with North American when he came on and joined it in 1927?

A. One of his principal duties was to follow the operations of the subsidiaries of Western Power Corporation. In addition to that, he participated in the general discussions and relations with other operating subsidiaries.

Q. By the way, during the period 1925-1930 when these companies were operating subsidiaries of North American, was any charge made to them for the services and advice that was rendered to them by North American?

A. We allocated to our subsidiary companies a part of the costs of North American Company and some of the officers of the North American Company drew salaries as [1441] officers of operating subsidiary companies, which salaries they turned into the North American.

(Testimony of James Fogarty.)

Q. And that practice was followed with respect to these subsidiaries up until the time of the sale of the securities in 1930, was it not?

A. I believe it was.

Q. Do you know at whose suggestion it was that Mr. Black came on to New York and joined the North American Company?

A. I believe it was at the suggestion of Mr. Dame, who was the President of the North American Company.

Q. It was not at your suggestion?

A. No.

Q. State what you know of the negotiations between North American Company and the Pacific Gas & Electric Company which resulted in the acquisition by Pacific Gas & Electric Company of stock holdings of North American Company in these operating subsidiaries.

A. I did not participate in those negotiations, but I can state in general that they were conducted by Mr. Black, Vice President of the North American Company, in consultation with, and reporting to Mr. Dame and Mr. Gruhl; Mr. Black's negotiations being conducted with Mr. Hockenbeamer, who was then their Vice President.

Q. Were parts of those negotiations communicated [1442] to you currently as they progressed?

A. Yes, from time to time Mr. Dame and Mr. Gruhl would tell me of the progress of the negotiations which Mr. Black was conducting in Cali-

(Testimony of James Fogarty.)

fornia with Mr. Hockenbeamer, and on occasions when Mr. Black was in New York I participated in discussions with him and Mr. Dame and Mr. Gruhl concerning those negotiations.

Q. Was there reported to you, or were you informed of any arrangement or understanding made in behalf of North American with the Pacific Gas & Electric Company respecting the position which North American Company would occupy following the sale of these securities to the Pacific Gas & Electric Company?

A. Yes. It is my recollection Mr. Hockenbeamer was very insistent that the North American Company in no way attempt to interfere with, or supervise, the management of Pacific Gas & Electric Company if negotiations were to be concluded, and that Mr. Dame and Mr. Gruhl had such an understanding with him as a part of the concluding negotiations.

Q. What term would you use to describe the position of North American Company with respect to Pacific Gas & Electric Company?

A. Merely a stockholder.

Q. Would it be fair to say that it looks upon its [1443] stock holdings as an investment?

A. It does.

Q. Was the question of a change from the owner of control of operating companies in California to that of an investor in a much larger company the subject matter of discussions at the time this transaction was being negotiated?

(Testimony of James Fogarty.)

A. Yes. We carefully considered that matter ourselves.

Q. And a decision was reached by North American with respect to this, was it?

A. Yes, it was. It was our conclusion that it would be in the interest of the entire situation in California if the territory served by Pacific Gas & Electric Company and Great Western Power, Great Western Power being a competitor of Pacific Gas & Electric, that all of the property be under one management and operation from the point of effecting operating economies, maintaining a stronger financial position, and generally in the public's interest as well as strengthening the operating situation. It was our feeling that in view of that we were willing to give up a controlling position or position of stockholders, minority stockholders, for the holders of an investment in the Pacific Gas & Electric Company.

Q. The considerations which you have just mentioned, [1444] are those principally, are they not, which led to the conclusion by North American Company that it was willing to go forward with this deal? A. They are.

Q. Who is Mr. Guy C. Earl?

A. Mr. Earl was President of Great Western Power Corporation at the time the North American Company acquired Western Power Corporation, which was its parent company.

(Testimony of James Fogarty.)

Q. Do you know what arrangement, if anything, or understanding, was had between Mr. Black and Mr. Hockenbeamer with respect to representation of North American on the Board of Executive Committee of Pacific Gas & Electric Company?

A. I believe an understanding was had that two, or perhaps three, members of North American organization were to be Directors of Pacific Gas & Electric Company upon completion of the transaction.

Q. Do you know whether there was any understanding with respect to representation on the Executive Committee?

A. I believe Mr. Earl, who was one of those named to go on the Board of Pacific Gas & Electric Company, was also to become a member of the Executive Committee.

Q. Did Mr. Earl send forward any information or reports respecting the action of the Board of Directors and of the Executive Committee of Pacific Gas & Electric [1445] Company? A. Yes.

Q. Did you see those?

A. On occasions. Mr. Black received those and followed them through.

Q. Will you describe generally their nature?

A. He sent on the financial and operating statements that were presented at the meetings, with comments upon the discussions which took place at the meetings when there was any matter of importance discussed.

(Testimony of James Fogarty.)

Q. Do you know whether those reports were preserved, his comments?

A. I could not say exactly as to that because they were more informal than reports—more informal communications than reports.

Q. Did Mr. Earl receive compensation from the North American Company during the time he served as a Director and member of the Executive Committee of the applicant? A. He did.

Q. Do you know what that amount was?

A. I am not sure. Of course, our records would show, but it may have been ten or twelve thousand dollars a year.

Q. Do you know whether or not that compensation was paid to him principally in consideration of past services, or was it for future services?

[1446]

A. Well, Mr. Earl had been President of Great Western Power Company, and as such he had been drawing a salary. We felt that with the acquisition of the subsidiaries of Western Power by Pacific Gas & Electric Company Mr. Earl would be the man to follow the reports of Pacific Gas & Electric Company and report to us. We did not feel that we could call upon him to render that service without compensation.

Q. Was the amount of it fixed in part in the light of the fact that he had been for many years an important and salaried official of these companies? A. Yes.

(Testimony of James Fogarty.)

Q. Sometimes the word such as "pension" is used in such relations. Might that be properly used here?

A. Well, I do not know whether it could be defined as a pension. It might be considered continuing compensation in a much lesser amount than he had been previously receiving.

Q. Do you recall the circumstances of a reduction in the amount of Pacific Gas & Electric dividend in September of 1933?

A. I could not say when it occurred, but I do remember that when it did occur we in the North American Company were very much surprised, because we did not know about it until the action had been taken, and Mr. Dame, who was then [1447] President of the North American Company, was not very happy about such an important action having been taken and the Directors of the company not having been consulted about it.

Q. Do you know what he did, if anything?

A. Well, I think both he and Mr. Black had some communication, perhaps by telephone—I believe it was by telephone—with Mr. Hockenbeamer about it.

Q. Did those communications have any result in changing the action? A. No, they did not.

Q. Do you recall the increase of current dividend of the Pacific Gas & Electric Company which took place sometime in 1936? A. Yes.

(Testimony of James Fogarty.)

Q. Were you consulted in advance in connection with that? A. No.

Q. Mr. Black was elected President of the Pacific Gas & Electric Company in November of 1935, succeeding Mr. Hockenbeamer. Will you state what you know about his selection?

A. The first time I knew he was being considered for the position was when Mr. C. O. G. Miller called me on the telephone and asked if we would not release Mr. Black. I told him at that time Mr. Black was one of our senior executives and Vice President of North American Company, and that [1448] we did not want to lose him. He was one of our important men. He said that he had discussed the matter with some of the members of the Executive Committee, and that he was calling me after that discussion. I believe it was on the following day that he called me on the telephone again, and said he had discussed the matter with the other members of the Executive Committee or Board, and that they concurred in the request made the day before that the North American Company release Mr. Black. Following Mr. Miller's first conversation with me, I told Mr. Black about it, and when Mr. Miller called me the second time I reported that to Mr. Black and told him that Mr. Miller would call him on the telephone and talk with him about it.

Q. When Mr. Miller called you on the telephone the first time, had Mr. Black's name occurred to

(Testimony of James Fogarty.)

you as a possibility for the presidency of the applicant? A. It had not.

Q. The suggestion came as a complete surprise, did it? A. It did.

Q. In that first conversation, did you tell Mr. Miller that you would release Mr. Black?

A. No, I do not recall that I did. I do recall my surprise and expressing to him that surprise, and also telling him that it would be a very important matter to the North American Company to lose Mr. Black. If that may be [1449] considered an expression of reluctance, then I would say that is so; but I do not recall the exact form.

Q. You did not tell Mr. Miller at that time it was all right, and you had no objection to it, did you? A. No.

Q. You took it under consideration, and it was not until the second conversation that you advised Mr. Miller that it had your approval if they wished to go forward with it?

A. Yes. I then explained to Mr. Miller that if the Board of the Pacific Gas & Electric Company wanted Mr. Black as President, and he wanted to accept it, that we in the North American Company did not feel we should stand in Mr. Black's way.

Q. What was the executive personnel situation in the North American Company at that time?

A. Within a short time before that, that is the year 1933, in one year we lost Mr. Gruhl by death. He was then President. In December of the same

(Testimony of James Fogarty.)

year we had lost Mr. Dame by death. He at that time being President, having resumed that office following Mr. Gruhl's death. Mr. Doolittle, who was a Vice President of the North American Company, was not in good health and retired the following year. Mr. Huff, who was a Vice President of North American Company, had wished to retire and did so at about the same [1450] time, or shortly after Mr. Black resigned, so that our executive staff having been depleted as it was, we would have suffered a very substantial loss, and did suffer a very substantial loss in the resignation of Mr. Black.

Q. Had Mr. Black, prior to your conversation with Mr. Miller, ever suggested the possibility of his being considered as President of the North American Company?

A. No, he had not. It is my recollection that the conversation with Mr. Miller was had very soon after the death of Mr. Hockenbeamer.

Q. When you spoke to Mr. Black after your first telephone conversation with Mr. Miller, did he evidence any surprise that he was being considered for that position?

A. Yes. He was greatly surprised.

Q. Will you state the substance of that conversation between yourself and Mr. Black?

A. I told him what Mr. Miller had said. I do not recall that he immediately expressed any opinion concerning it. We did discuss our own executive

(Testimony of James Fogarty.)

situation in the North American Company, and as nearly as I can recall, the matter was left for further discussion, which discussion took place after Mr. Miller's second telephone call.

Q. Did you advise Mr. Black at the time of our first conversation, you were willing to release him?

A. Well, in that first conversation we discussed the [1451] position of our executive staff as I have outlined, and I do not recall that I expressed to him any opinion at that time that the North American Company would object to it, but I, in going over the circumstances with which he was familiar, pointed out to him what it would mean to the North American Company.

Q. You did not express any enthusiasm at the prospect of his going, did you?

A. I did not.

Q. Upon Mr. Black's election as President of the Pacific Gas & Electric Company, did he sever all his relations with the North American Company and its associated companies?

A. He did. [1452]

Q. Since that time, has he occupied any position or had any business relationship with the North American Company or any of its associated companies? A. He has not.

Q. By the way, do you personally own any securities in the Pacific Gas and Electric Company?

A. I do not.

(Testimony of James Fogarty.)

Q. What communications have you had with the Pacific Gas and Electric Company or its officers or employees since 1930?

A. I do not recall that I had any prior to the time I became president of the North American Company. Since that time they have been very few.

Q. What has been the subject matter of those communications?

A. Principally such matters as any important rate reduction which the company was contemplating and which Mr. Black was proposing to recommend to the Board, proposals which he was contemplating presenting, perhaps, with respect to refunding outstanding securities, and any other matters of such importance. For instance, a matter like the Hetch-Hetchy situation.

Q. These communications have been by telephone, principally?

A. Yes, but my telephone conversations with Mr. Black [1453] have been very few. There may have been a letter or two concerning some of them, I do not recall at the moment.

Q. Could you approximate the number of communications you have had per annum?

A. I may have talked with Mr. Black over the telephone perhaps four or five times a year.

Q. And how many letters per year?

A. Oh, maybe two or three. When some litigation of importance such as the rate case, for instance, was up, Mr. Black may have sent on copies

(Testimony of James Fogarty.)

of briefs filed by counsel for the company, and they would be acknowledged. I should say that the communications by letter were probably not more numerous than the telephone calls.

Q. During the period that you have been a director of the Pacific Gas and Electric Company, have you received corporate reports from time to time from the Pacific Gas and Electric Company?

A. Yes.

Q. How were those reports sent?

A. They are sent either to Mr. Freeman or to me, addressed to us individually, and they are the regular monthly reports of the company.

Q. I show you Applicant's Exhibit No. 33. (Handing witness document) Are the reports which are shown in that exhibit typical of the sort of reports which are sent to you? [1454]

A. Yes.

Q. What is done with those reports?

Mr. Freeman looks them over more frequently than I do and then they are placed in our files.

Q. Have you ever, of your own initiative, in behalf of the North American Company, communicated to Pacific Gas and Electric Company or any of its officers, your views respecting a contemplated action by Pacific Gas and Electric Company before it has been taken?

A. I may have expressed to Mr. Black a view with respect to some matter such as a proposed

(Testimony of James Fogarty.)

rate settlement, at the time he told me he proposed to submit it to the Board.

Q. That is, the settlement of the gas rate litigation that you have in mind? A. Yes.

Q. That involved several million dollars?

A. That's right.

Q. And your view as a director was asked by Mr. Black?

A. He called me and told me it was proposed to settle that litigation, and it is my recollection that I felt that it would be a wise thing to do from the viewpoint of the company and the public generally.

Q. And you expressed your acquiescence in that suggestion? A. Yes. [1455]

Q. Do you recall of any other instances?

A. No, I do not. That is the one I had in mind, particularly.

Q. My question really was, have you ever, of your own initiative, made any suggestions with respect to Pacific Gas and Electric Company?

A. No, I have not.

Q. Prior to action?

A. I have not. I am sorry I overlooked your expression of "my own initiative."

Q. Your answer is no? A. No.

Q. And your answer with respect to consultation or discussion generally prior to action is confined to your answer to the former question?

A. That is correct.

(Testimony of James Fogarty.)

Q. Has Mr. Black asked the benefit of your information in connection with market conditions in connection with the sale of securities by P. G. & E.?

A. Yes, Mr. Black has, on occasion, called me to get some information as to the state of the bond market and the general position of securities, whether issues which had previously been gotten out and distributed, and what effect that had on the market.

Q. Has the North American Company ever attempted to [1456] influence or control the management, policies or acts of the applicant?

A. It has not.

Q. Are the management or policies of the applicant subject to a controlling interest either directly or indirectly by the North American Company?

A. They are not.

Q. Has the North American Company ever attempted to influence or control the payment of dividends by the applicant?

A. Yes, in 1933, when the dividend was reduced, Mr. Dame made an effort to have it restored, but without success.

Q. With that exception, do you know of any?

A. No, I do not.

Q. Have you or anybody else in the North American Company ever attempted to, ever suggested the election or selection of any official or employee of the Pacific Gas and Electric Company?

A. No.

(Testimony of James Fogarty.)

Q. That question a moment ago, I think I used the wrong word in that, and I will therefore repeat the question: Are the management or the policies of the Pacific Gas and Electric Company subject to a controlling influence, either directly or indirectly, by the North American Company?

A. No. [1457]

Q. Are any contracts, oral or written, in existence between the North American Company and the P. G. & E.? A. No.

Q. Does the P. G. & E. owe any money to the North American? A. It does not.

Q. Does the North American owe any money to the Pacific Gas and Electric Company?

A. It does not.

Q. Since 1930, has the North American Company ever had any business or other transactions with the Pacific Gas & Electric Company except with relation to the issuance of the stock and stock rights relative thereto? A. No.

Q. Are drafts of the proposed annual reports of the Pacific Gas and Electric Company sent to you as a director?

A. Yes, I think a printed proof is sent to me.

Q. Is there enough time left after you receive it to communicate any suggestions you might have prior to its being printed?

A. There has not been.

Q. In fact, you usually get the draft after the report has been printed in San Francisco?

(Testimony of James Fogarty.)

A. Well, it is my recollection that I receive the proof at about the time it is to go out to the stockholders.

Q. Has any representative of the North American Company [1458] ever been present in person at a stockholders' meeting of the Pacific Gas and Electric Company? A. No.

Q. Has it been the practice of the North American Company to execute and forward the usual form of company proxies sent out by the Pacific Gas and Electric Company? A. It has.

Q. Mr. Earle died in 1935. Do you know whether or not any discussions were had as to the selection of a successor to him to serve on the Executive Committee of the applicant as a representative of North American Company?

A. Well, I have the recollection that Mr. Black and I talked about the matter and he may have discussed it with Mr. Hockenbeamer, but I have no recollection of any specific discussion.

Q. Did you have any views at that time with respect to whether or not some successor should be appointed?

A. I do not recall now that I did.

Q. The matter was simply permitted to lapse, was it? A. Yes.

Q. In your opinion, Mr. Fogarty, would it be possible for the North American Company, either directly or pursuant to some arrangement or understanding with others, to gain control, directly or

(Testimony of James Fogarty.)

indirectly, of the Pacific Gas and Electric Company? [1459]

A. Whom do you mean by "others"?

Q. Well, any one.

A. Only if the Board of Directors of Pacific Gas and Electric Company were to join in such a movement.

Q. Do you think it would be possible for the North American Company to acquire stock control of the Pacific Gas and Electric Company?

A. As a practical matter, no.

Q. Why?

A. Well, the number of shares outstanding is so large that before even a small fraction of the additional amount that we would have to have to have control could be acquired, the price would reach prohibitive levels, if for no other reason.

Q. You could not even start to buy stock, could you, without getting the approval of the S. E. C.?

A. No.

Q. So you would have to have the cooperation of the S. E. C. if you were to increase your stock holdings in this company, would you not?

A. We would.

Q. What chance, do you think, the North American Company would have to acquire control of the applicant as against the management and Board of Directors in San Francisco?

A. None. [1460]

Q. Why?

(Testimony of James Fogarty.)

A. Well, the Pacific Gas and Electric Company is an old established California company. Its management has always been local. Its directors apparently are men of considerable standing, and undoubtedly would be able to obtain enough proxies from the stockholders to prevent the acquisition of control by any other interests that sought it.

Q. If the North American attempted to solicit proxies, it would have to do so under the rules and regulations of the S. E. C., would it not?

A. It would.

Q. In your opinion, would it be possible for the North American Company, either alone or in cooperation with others, to obtain a controlling influence over the management and policies of the Pacific Gas and Electric Company?

A. No, excepting in conjunction with the Board of Directors.

Q. Do you think there would be any chance of obtaining such an influence against the opposition of the directors and management of the company?

A. I do not.

Q. Do you control or have a controlling influence over any director or officer of the Pacific Gas and Electric Company, with the exception of Mr. Freeman? A. No. [1461]

Q. Is Mr. Black a representative of the North American Company? A. He is not.

Q. Is any one holding an official position with the Pacific Gas and Electric Company or serving

(Testimony of James Fogarty.)

as a director, a representative or subject to the control of the North American, with the exception of Mr. Freeman? A. No, and myself.

Q. And yourself, yes. In your opinion, would it be desirable or in the interests of the North American Company to attempt to gain either control or exercise the controlling influence over the management or policies of the Pacific Gas and Electric Company?

A. Would you mind repeating the question?

(Question read.)

A. I can think of no reason why it would.

Q. What effect would any such attempt have on the values of the securities of P. G. & E., in your opinion? A. I don't know.

Q. Do you think that such an attempt would be resented by the local directors and by the public generally in the territory served by the company?

A. Well, I am sure it would be resented by the local directors, and with such a large amount of Pacific Gas and Electric stock held locally as it is, I imagine the preference [1462] of those stockholders would be for the ownership to remain as it is.

Q. Yes. Now, referring to the attitude of the public generally and public officials, what do you think to reaction would be?

A. The local regulatory authorities and the local public officials would probably prefer to have the

(Testimony of James Fogarty.)

company remain in control of the local board and local stockholders.

Mr. Phleger: I think that is all.

The Examiner: I think we will take a few minutes' recess.

(Thereupon, a short recess was taken.) [1463]

The Examiner: Resume the hearing.

Cross Examination

By Miss Calkin:

Q. Mr. Fogarty, what interests controlled the Western Power Corporation at the time it became a sub-holding company in the North American System?

A. There were several large stockholders, I believe.

Q. Do you remember a man by the name of Wilson? A. I do.

Q. Was he one of the large stockholders in Western Power Corporation? A. He was.

Q. Do you know whether or not he was the person with whom the representative of the North American Company carried on their negotiations in respect to the acquisition of the control of that company? A. He was.

Q. Would you say the interests which controlled Western Power Corporation in 1925 were Eastern or Western interests?

(Testimony of James Fogarty.)

A. I do not recall. Mr. Wilson was a Californian. That is, he had a home in the East, but he had spent a good deal of time in California and had been responsible for developing Great Western Power Corporation.

Q. I believe on direct examination you testified the [1464] acquisition of the control of that company was accomplished by an exchange of common stock of the North American Company for common stock of the Western Power Corporation. Wasn't there also—I mean, didn't the North American Company acquire a substantial block of the preferred stock of the Western Power Corporation?

A. Yes, but I think that was by purchase and not in exchange.

Q. Not in exchange?

A. I am not entirely clear about that. It was not ordinary common stock, at any rate.

Q. Were you a member of the Board of Directors of Western Power Corporation from 1925 to 1930?

A. I may have become a director as soon as the North American Company acquired control, but I am not sure.

Q. Who would you say was in active charge of the affairs of Western Power during that period?

A. Mr. Black, who was then a vice-president of the North American Company, followed the operation of the Western Power subsidiaries more particularly.

(Testimony of James Fogarty.)

Q. What were the activities of that corporation from 1930 until the time of its dissolution which, I believe, occurred in 1936?

A. Nothing except an investment company, its assets consisting of Pacific Gas and Electric Company common stock [1465] and some cash.

Q. At all times, Western Power Corporation's portfolio consisted of its investment in subsidiaries of Pacific Gas and Electric common, is that true?

A. I believe that is correct.

Q. You know little about the negotiations which preceded the acquisition of the controlling stock of the subsidiaries of Western Power Corporation by the applicant other than what Mr. Dame and Mr. Gruhl and Mr. Black and others told you, is that correct?

A. That is true. I did not participate in the negotiation.

Q. You had no conversations at all with Mr. Hockenbeamer prior to the acquisition of the control by the applicant of those subsidiaries?

A. Well, during that period Mr. Hockenbeamer may have been in New York and had luncheon with Mr. Dame, Mr. Gruhl, and Mr. Black, and I may have met him. I know that I did have luncheon with him and he came down to the office, but I am not clear as to when that was.

Q. But you had no specific duties to perform with respect to that acquisition?

A. I did not.

(Testimony of James Fogarty.)

Q. Who proposed the acquisition of the subsidiaries of Western Power Corporation? [1466]

A. I believe Mr. Hockenbeamer did.

Q. In your opinion, was one of the parties to the transaction more anxious to have it consummated than the others, and if so, which one?

A. Well, the idea originating with Mr. Hockenbeamer, I would say that he was more interested to make the acquisition than the North American Company was to dispose of its holdings.

Q. Do you know when the idea that such an acquisition might take place first originated?

A. No. I could not fix the time.

Q. Did you ever know that as early as 1922 the applicant carried on negotiations with the people that were then in control of Western Power Corporation for the acquisition of the securities of the then subsidiaries of Western Power Corporation?

A. No, I did not know.

Q. Was control of Western Power Corporation acquired by North American with the idea in mind that there would be a subsequent disposition of those properties? A. No.

Q. To the applicant? A. It was not.

Q. Why did North American Company acquire control of the Western Power Corporation? [1467]

A. North American Company's policy might be said to be based on two important factors: One, an acquisition of property that, through the effecting of operating economies or some physical advantage

(Testimony of James Fogarty.)

in the way of providing power supply, would be helpful to already existing subsidiaries or, two, a situation, which afforded promise of opportunity for profitable development of funds with prospective growth of Western Power Corporation in that category.

Q. You mean to say it has not been the policy of the North American Company to acquire operating companies for the purpose of trading in them or selling them at a later date?

A. It has not. Quite to the contrary in 1923 we acquired a holding company for the purpose of acquiring properties that fitted into the territory of some of our operating subsidiaries; and when we acquired that holding company we disposed of all the outlying properties and retained only those that were located in the territory of our own subsidiaries.

Q. If you know the reasons which motivated the North American in consummating exchange of the securities of Western Power Corporation subsidiaries for the common stock of the applicant, I wish you would relate all the reasons why the deal was considered desirable from the standpoint of North American Company.

A. The Great Western Power Corporation which was one [1468] of the two principal subsidiaries of Western Power was a competitor of Pacific Gas and Electric Company? Pacific Gas and Electric Company was a very much stronger com-

(Testimony of James Fogarty.)

pany. Its credit position was very much better. It seemed to us that the acquisition by Pacific Gas and Electric Company of the properties of Western Power would provide the advantages which would result in elimination of competition and would enhance the possibilities of developing that part of what would be the Pacific Gas and Electric Company's system; and for that reason would be generally in the interest of the public and the companies themselves.

Q. Did North American ever consider the sale of those securities for cash to the applicant?

A. I do not recall that the Pacific Gas & Electric Company proposed to purchase them for cash. We would not have looked upon a cash sale with favor.

Q. Why not?

A. First, there was a very substantial amount involved and it would have been difficult for us to re-invest the money on a satisfactory income basis, and I believe that under the new organization provisions of the Revenue Law at that time the acquisition of control in exchange for stock of the Pacific Gas and Electric Company obviated taxable profit.

Q. In determining to make the deal on the basis on which it was made, was one of the primary considerations the [1469] fact that the dividends expected from the common stock of the applicant

(Testimony of James Fogarty.)

would be a substitute for or approximately equal to the expected earnings of those subsidiaries?

A. It was.

Q. Had they been retained by Western Power?

A. It was.

Q. Did Mr. Williams take an active part in the negotiations preceding the 1930 deal? A. No.

Q. Do you recall why that was?

A. There was no reason why he did not any more than any other officer. I am not sure, but it is my recollection—I am not sure in the first place, but it is my recollection that he was not then an officer of the North American Company; and if he were, it would have been necessary that every officer participate in the negotiations.

Q. Do you know whether or not Mr. Williams approved the transaction before it was consummated?

A. I believe we, as the negotiations were proceeding, kept our Board of Directors advised; and when they were concluded the Board approved it.

Q. Was Mr. Williams Chairman of the Board at that time of North American?

A. I do not believe he was.

Q. What was your position with the company in 1930? [1470] A. Vice-president.

Q. What disposition was made of the assets of Western Power upon its dissolution?

A. They were distributed to the stockholders.

Q. It was as a result of that dissolution that

(Testimony of James Fogarty.)

the North American now owns its holdings in the applicant.

A. That's right, except that before Western Power Corporation was dissolved, it offered to its stockholders the right to purchase part of its holdings of Pacific Gas and Electric Company and the North American Company exercised that right of purchase applicable to its holdings and thereby came in direct possession of a large amount of the Pacific Gas and Electric Company's stock. The balance of it, I believe, was given to the North American Company in proportion to its holdings at the time of dissolution.

Q. I believe you testified it was your understanding that North American, upon the consummation of the 1930 transaction, would be entitled to two or three members on applicant's Board of Directors and one member on its Executive Committee. Do you know how and by whom this determination was made?

A. I believe that was the result of an understanding with Mr. Hockenbeamer. That is my recollection.

Q. Do you know whether or not North American requested a larger representation than it was agreed it would receive? [1471] A. I do not recall.

Q. To what extent was it then anticipated, that is at the time of the 1930 deal was completed, that North American Company would participate in the affairs of the applicant?

(Testimony of James Fogarty.)

A. It was not contemplated that it would participate in its affairs at all. In fact, Mr. Hockenbeamer felt very strongly that if the transaction was consummated, the North American Company should occupy the position only of stockholders.

Q. Do you know why he took that position? Did he ever indicate to you?

A. No, he did not, but I assumed it was because he and the directors wanted to continue their policy of local management.

Q. Mr. Fogarty, up to that time, had North American ever acquired such a substantial interest in the common stock of a utility company without taking an active part in the determination of the operating and financial policies of the company whose securities would have acquired?

A. Expressed in dollars, I do not believe that that is true, but the North American Company had at that time a large investment in the Detroit Edison who was not one of its subsidiaries and whose management and policies and operations it did not control.

Q. Would you say that that was the only company in [1472] which the North American owned directly or indirectly as much as 30 percent of the common stock in which it did not participate in its operations and financial policy?

A. No, the North American Company, in 1926, acquired a large interest in the common stock of

(Testimony of James Fogarty.)

North American Light & Power Company, and it did not undertake the control of that company until 1932, the end of 1932, or early in 1933, following the receivership of the Middle West Company, which with its affiliated companies, had an interest about the same as the North American Company's.

Q. Would you say, then, that the Detroit Edison and the North American Light & Power Company were the only situations where the North American owned as much as 30 percent of the common stock, where it did not control?

A. Yes, they are the only two instances which I recall.

Mr. Phleger: May I interrupt?

(Discussion off the record.)

By Miss Calkin:

Q. Would your answer be the same, then, with respect to companies in which North American Company owned as much as 17 percent of the voting securities, Mr. Fogarty?

A. Yes, as far as I can recall.

Q. What did you consider North American's sphere of influence as regards the applicant would be when the 1930 [1473] transaction was completed and North American became the owner of approximately 17 percent of the voting securities of the applicant?

A. Merely to the extent that the number of North American officers on the Board were to have votes individually as directors.

(Testimony of James Fogarty.)

Q. Why has North American had only two representatives on applicant's Board since 1926, when it is entitled, under the oral agreement had with Mr. Hockenbeamer in 1930, to three such representatives?

A. I don't know that there was any particular reason for that. When a vacancy arose, the local directors preferred to fill it by electing a Californian, the North American Company would not have expressed objection to it.

Q. Well, North American has had only two representatives on applicant's Board, I believe, since Mr. Earle's death, at which time Mr. Black and Mr. Doolittle were its representatives. Following Mr. Earle's death, and then following Mr. Black's election to the presidency of the applicant, what discussions, if any, did you have with either Mr. Hockenbeamer or Mr. Black or other representatives of the North American Company with respect to electing a director, which would give North American three members on applicant's Board?

A. I had no discussions with Mr Hockenbeamer. I [1474] believe Mr. Black and I talked about it after Mr. Earle's death, but nothing registers very clearly in my mind, and I would say that the matter just dropped.

Q. Well, you don't recall, then, instructing Mr. Black, or telling Mr. Black, to inform Mr. Hockenbeamer that North American did not desire that

(Testimony of James Fogarty.)

the vacancy created by Mr. Earle's death be filled by its representative?

A. I do not recall that.

Q. Now, shortly following Mr. Black's election as president of the applicant, I believe you became a member of the applicant's Board. Now, at that time was there any discussion as to future representation by North American Company with three directors? A. No.

Q. So you now recall no discussions had between yourself and Mr. Black as to North American's future representation being reduced to two members? A. No.

Q. Do you now feel, or have you ever felt, that because Mr. Black, who was formerly associated with the North American Company is now president of the applicant, that North American's full representation on applicant's Board is not necessary as it was prior to Mr. Black's presidency?

A. No, there was no connection between the two [1475] things.

Q. You would say there was no co-relation between the determination of North American Company to have only two representatives and Mr. Black's election to the presidency of the applicant?

A. Yes.

(Testimony of James Fogarty.)

Q. Have you ever heard any one connected with the North American Company state, in substance, that as president, Mr. Black would protect North American's interests in such a manner that the full representation on the Board would be unnecessary?

A. No, I have not.

Q. Have you ever discussed the matter with Mr. Williams? A. No.

Q. With Mr. Shea? A. No.

Q. Have you never considered Mr. Black a North American representative on applicant's Board since he assumed the presidency of the applicant? A. I have not.

Q. Have you testified as to oral discussions which you now can recall concerning North American's decision to reduce its representation on applicant's Board to two members? [1476]

A. Yes.

Q. Why did Mr. Doolittle resign as member of the applicant's Board?

A. He resigned at the time that he retired from the North American Company.

Q. Do you know how the Proxy Committee or persons to whom proxies of the applicant are addressed are selected?

A. I assume they are selected by the Board of Directors of the Pacific Gas and Electric Company.

Q. But you have no personal knowledge?

A. No, I read that in the minutes, perhaps, that

(Testimony of James Fogarty.)

is the usual procedure, and I assume it was followed in the case of Pacific Gas and Electric Company.

Q. Have you, as director of the applicant, ever suggested the name of any member of the Proxy Committee? A. No.

Q. Has Mr. Black or Mr. Hockenbeamer ever conferred with you as to who should constitute the members of the Proxy Committee? A. No.

Q. Prior to mailing out proxy statements, which, under the present rules of the S. E. C., must state the names of the directors, the Proxy Committee proposes to vote for, what conversations, if any, have you had with Mr. Black concerning the persons whose names should be inserted in [1477] the proxy statement as the proposed directors?

A. None.

Q. Did you ever discuss with Mr. Hockenbeamer the membership of applicant's Board of Directors?

A. I did not.

Q. Have you ever suggested the election of any one to that Board other than those individuals who are recognized as North American's representatives on that Board? A. I have not.

Q. Have you ever suggested the non-election of any individual other than the so-called North American representatives? A. I have not.

Q. What discussions, if any, have you had with Mr. Black concerning the personnel of applicant's Board? A. None.

(Testimony of James Fogarty.)

Q. By what means——

A. That is, none that I recall.

Q. By what means does the North American advise Mr. Black whom it desires elected as its representatives on applicant's Board at the annual meeting of stockholders?

A. We do not advise him. We assume that we are advised to the contrary, that the officers of the North American Company who are directors of Pacific Gas & Electric Company will be renominated for election. [1478]

Q. Mr. Fogarty, have you seen copies or the original of documents which I took from the files of the North American Company when I made an investigation preliminary to this proceeding, in the Fall of 1939?

A. Well, I have seen the file, copies of which we have, but I have not examined them.

Q. Do you recall several letters from Mr. Dame and Mr. Gruhl and Mr. Black, advising Mr. Hockenbeamer as to whom North American would like to have elected as its representatives on applicant's Board?

A. I do not recall having seen those letters.

Q. Have you ever written any such letters to Mr. Black since you have been a director of the company? A. I have not.

Q. And you say you have not advised Mr. Black, prior to each annual stockholders' meeting, that

(Testimony of James Fogarty.)

North American desires the re-election of yourself and Mr. Freeman? A. That is correct.

Q. But you——

A. I have not advised him.

Q. But you have merely assumed you would be re-elected in absence of advice to the contrary?

A. That is correct.

Q. Since you have been a director of the applicant, Mr. Henry D. Nichols has become a member of applicant's [1479] Board. Did Mr. Black confer with you regarding Mr. Nichols' election?

A. He did not.

Q. As director of the applicant?

A. He did not.

Q. Mr. Crocker, the evidence previously introduced in this case shows, was elected to the applicant's Board in October of 1937. Did Mr. Black confer with you regarding the selection of Mr. Crocker, the proposed selection of Mr. Crocker?

A. No.

Q. Mr. Palmer was elected to applicant's Board in October, 1936. Did you have any conversations with Mr. Black concerning Mr. Palmer's selection as a director? A. I did not.

Q. Mr. Wishon was elected at the same time as Mr. Palmer. Were there any discussions with Mr. Black concerning Mr. Wishon's election?

A. No.

Q. Mr. McIntosh became a member of the Board at the same time that you did, Mr. Fogarty. Were

(Testimony of James Fogarty.)

there any discussions with Mr. Black concerning Mr. McIntosh's selection? A. No. [1480]

Q. Has there ever been a time when a North American representative was in fairly regular attendance at applicant's directors' meetings?

A. No.

Q. Did you consider Mr. Guy C. Earle a representative of North American Company or applicant's Board? A. Yes.

Q. Do you know with what degree of regularity Mr. Earle attended Board meetings?

A. I think he attended quite regularly.

Q. Then it is true that during his lifetime North American did have a representative in regular attendance at applicant's Board meetings?

A. Yes. I had not thought of Mr. Earle when I answered your previous question.

Q. Did Mr. Earle advise North American Company rather fully concerning discussions by Board members and the action taken at Board meetings during the time he was on applicant's Board?

A. Yes. He reported on action taken at the Board meetings or Executive Committee meetings and made some notes concerning discussions that were had.

Q. To what extent did you or other representatives of the North American Company communicate your viewpoint to Mr. Earle with request he present them on behalf of North American [1481] Company to Board meetings?

(Testimony of James Fogarty.)

A. The only case which I can recall in which a North American viewpoint was requested to be presented to the Board was at the time of the reduction of the dividend.

Q. Was that request made to Mr. Earle?

A. I could not say whether—well, undoubtedly the matter was discussed with Mr. Earle, but I believe Mr. Dame and Mr. Black also discussed it directly with Mr. Hockenbeamer.

Q. What action did you or any representative of the North American Company take on the information which Mr. Earle supplied you during his directorship?

A. I do not recall at any time—I don't recall any time at which any action was required.

Q. Wasn't Mr. Earle's function as a director during his lifetime to convey to the Board the views of the North American Company on various matters which were under consideration by the Board or the Executive Committee?

A. No. I suppose if the North American Company had any view on any matter which was proposed, it would have been communicated to the Board through Mr. Earle. But, as I say, the only instance in which a North American viewpoint was presented on which I have recollection was that of the reduction of the dividend. Mr. Earle's function and the service he performed was to attend the meetings and send to us the reports which were given to